THE POLITICS OF DESIGN CHANGE: FACILITATING THE PRACTICE OF LANDSCAPE ARCHITECTURE THROUGH CONFLICT RESOLUTION STRATEGIES

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CHAPTER ONE: THE SETTING

Statement of the Problem

The purpose of this thesis is to determine whether a more systematic process for resolving conflict can be developed for use in design offices. A variety of approaches have been tried by firms on an individual basis, known only to them. They have evolved by trial and error, some far more effective than others. Gradually, landscape architects who seem to have a special talent for dealing with controversial public projects are emerging and oftentimes consult as third party neutrals outside of their own firms. While in the future it would help to have a systematic study done of the effectiveness of conflict resolution methods currently used throughout the profession, this thesis will initiate the process by examining one case study in depth to see how the methods used in landscape architecture compare with the generic model of active mediated negotiation developed at Harvard University. (Susskind and Madigan, 1984) Based on examination of this case, is there value in

landscape architects acquiring mediation techniques as developed in the generic model? Could controversial design projects be handled more efficiently and equitably? Are there applications possible even for small projects?

Research Design

This study explores the process, perhaps unconsciously utilized, by a planning/design firm in resolving conflict, then compares this process with the Susskind-Madigan model, defined in Chapter Four. A matrix is used to determine how applicable a generic model can be to a typical design project.

Planning literature is first examined in Chapter Two to document evidence that part of current planning practice is an extension of the mediating role evolved in the late 1970s and 1980s. Literature in landscape architecture is searched to trace the integration of planning in the current and future job scope of landscape architects. Telephone and personal interviews are also used to gather this type of background information.

The methodology for using case studies as a research tool in testing a hypothesis is outlined in Chapter Three. Chapter Four describes the selected case study and model for resolving conflict. Comparison of the model to a typical

design project involving conflict is made in Chapter Five, followed by an evaluation of the model for use in landscape architectural firms.

Current Design Practice

Design projects are increasingly complex in the number of affected individuals and groups who desire involvement with the design process and/or are affected by the final plan. Often the landscape architect is faced with conflicting interests, especially when user and client differ. Projects such as traffic corridors, urban redevelopment, or housing developments may be "in-process" for years while unhappy parties try to impede implementation of the project. It is costly for design firms to tie up resources over extended time while litigation is contemplated, or attempts at settlement take place. The typical design project, surrounded by conflict which has resisted informal mediation efforts, either dies or is taken to court. Consensus is not achieved by this means, however. Instead, a winner and loser are designated. Dissatisfied parties still exist. If they are unorganized and have few resources, court representation may have been impossible.

Causes of Increased Conflict

Why is conflict more likely to arise now, in the implementation of master plans, than in the past? Lane

Marshall believes that in the past, design decisions were made by a small elite group consisting of elected and appointed governmental officials and a few select special interest groups which held similar values and goals. Consensus was possible with little effort. (Marshall, 1983, p. 88)

The last few years have seen a dramatic rise in special interest groups, which are more diverse. To gain consensus and/or power means coalescing these groups to agree on a common set of goals for the particular design project. This democratization of the process slows it down, even under ideal handling. Lacking has been an acknowledgement of the need for new procedures and a conscious effort to develop new workable processes. Developing designs in isolation from the real world of interest groups, local politics and the current economy is no longer realistic. Moreover, people want a voice in the design and consequent use of their buildings, streets, parks and cities. They are no longer satisfied to be mere spectators and consumers in a world designed and managed by remote professionals. There must be a comprehensive understanding of the social, cultural, political and economic setting in which the design takes place, besides maintaining a respect for the land.

Traditionally, professional designers have played a passive

role in design decision-making, being a part of the process, but not an ultimate decider. As participants in the process multiply, Marshall feels that the demand for professional accountability will rise and correspondingly so will their opportunity for direct participation in the process. But to take advantage of the opportunity assumes the professional designer believes in the involvement of all interested and concerned parties before and during the design process. At this stage, he/she can direct the participatory process. Success can also hinge on the designer setting forth his planning and design process with the client before a contract is signed.

There are still many professional architects and landscape architects who feel uncomfortable soliciting public input into the design process during the planning and implementation stages. They believe "group" design results in amateur solutions. Design issues should be decided by professionals only. The thought of seriously incorporating the ideas of multiple citizen interest groups, government, and the corporate world is not reconcilable with their idea of professional practice. And the more groups and individuals who desire active participation, the longer the list of demands and constraints there are for designers to consider. Design solutions may be more difficult to attain, and take longer to achieve. This segment of design professionals

choose not to involve themselves in the messy politics of group participation in the design process. The risk of coming out with a design solution aesthetically pleasing, but not answering community needs and desires, is high. With these working methods, their project options are:

a. Avoid taking projects sure to be controversial and involving strong and vocal participatory groups.

b. Find a client who believes as you do that it is better to "secure the deal" and present the completed project at a public hearing, emphasizing the greatest public good.

c. Go into projects with a clear client-designer understanding that the client will direct all consensus-building efforts if conflict emerges. Hopefully, the client would seek out a firm which held similar values to theirs.

d. Be prepared to abandon projects where there is no hope of early consensus to achieve a design solution.

Traditional-practicing design professionals are not willing to compromise if they are convinced their client is acting in the public good. Why should one bring in a neutral third party if one <u>knows</u> he/she is right? With so much money invested in a project, a neutral would be too risky. And

how should the cost/benefit ratio be balanced with the interest of the public good?

What is described above is the stereotype of the traditional professional designer, originating, in this case, from interviews with professional landscape architecture firms and architects. (Kremer, November 7, 1986, Kubota, November 3, 1986, and Marshall, November 17, 1986) The traditional designer stereotype has been described by Dana Charlene Cuff in her 1982 dissertation, Negotiating Architecture: A Study of Architects and Clients in Design Practice. Cuff uncovered evidence that contrary to what architects espouse in the way of traditional practice, in the California firms she observed, collaboration was a part of the design process. She, however, confined her study to only architects and their clients, not multiple interest groups.

Cuff believes much more research in design practice is needed. Architects have little idea of how their colleagues interact with clients. The same is true in landscape architecture. Rodney P. Mercer, Technical Activities Coordinator for A.S.L.A. in Washington, D.C., and Lane Marshall, past President of A.S.L.A., in interviews supported the idea of needed research in the practice of landscape architecture. Because of this lack, there is no way of gaining an overview of how projects with conflict

move through design offices. Telephone interviews have yielded several methods currently being practiced with some degree of success. Some involve third party neutrals, while some do not.

Conflict Resolution Methods Currently in Use By Landscape Architectural Offices

Several firms contacted believe a successful master plan is the resolution of conflict, developed by utilizing the input of all affected parties. (Karner, November 11, 1986) Where needs are not compatible, then design alternatives are offered, with the client making the final decision. Principles in other firms resolve any conflict before it progresses to the client. These landscape architects feel if the design process is inclusive for all affected parties, later conflict will be avoided. (Kubota, November 3. 1986) Citizen participation is seen as an insurance policy against future conflict.

In complex projects, with several disputing participants, Jones and Jones in Seattle uses a technique called Polarity Planning. They assign a different staff person to maximize the needs of each group. Then they meet and compare plans, identifying similarities and differences. If the differences cannot be peacably resolved, they bring in a third party, Nea Carroll. (Jones, November 17, 1986)

Oblinger-Smith in Wichita, Kansas used a task force approach comprised of parties interested in the outcome of a zoo and parking project. Conflict was resolved, the master plan developed, and a later sales tax passed to implement the design. (Montgomery, November 14, 1986)

Some design principles, because of their high regard as leaders and spokesmen, serve as mediators for firms other than their own. Both William and Carl Johnson work in this capacity, as does Ralph Ochsner.

Gregory Palermo, with the HOK group in St. Louis, Missouri, reports that in his firm, large-scale conflict is usually handled by the client, before the designer is brought in. Conflict in small-scale projects is usually managed by the design firm.

Future Directions in Design Process

How can new design processes meet the challenge of the future? What is currently involved in the design decision-making process? A broader concept of what constitutes "good design" includes not only beauty and aesthetics, but how it works. In addition to being functional, these expanded goals support "the contribution of the natural built environment to human needs and expectations, and to the quality of our lives." (Marshall, 1983, p. 198) As the

criteria for judging "good design" broadens, the process correspondingly, can expand the traditional "design only" role of the landscape architect.

Secondly, the interaction of procedures and participants must be clearly defined. In the past, responsibility was unclear and overlapping, procedures were slow and confusing, and public and private interests worked against each other, not in collaboration. Somehow, all the decision-making participants must be insured appropriate and effective involvement. And the continued generation of public projects, with the scarcity of public funding, will be dependent on public/private cooperation and trust.

This study explores the application of one relatively new strategy being developed in the field of environmental conflict resolution to a project typical in the practice of landscape architecture. In doing so it is hoped these negotiation methods will facilitate the design process when the potential or existing presence of conflict may delay the final acceptance of the design or plan by the client and user.

Controversy over land use and environmental issues is not likely to diminish in the near future. People will continue to view development differently. Current trends

based on a review of 1800 reported cases of just one type of conflict, environmental, between 1970 and 1977 revealed that:

> Environmental conflict is spreading geographically, but once it emerges in any particular region, it remains. Environmental conflict is spreading to encompass a wider range of industrial facilities...Environmental conflict is more and more focused on new projects moving into an area rather than on problems in existing facilities. The frequency of environmental conflict is steadily rising with an increasing percentage of heavy industrial projects encountering community opposition. (Gladwin, 1978, pp. 48-49. In Bacow and Wheeler, 1984, p. 3)

In short, the hypothesis is that design projects, either experiencing conflict or which have the potential of being impeded by conflict, can benefit by conflict negotiation or mediation strategies.

CHAPTER TWO: BACKGROUND

Chapter two first describes the evolving role of planners from technical expert to that of mediator, then builds justification for landscape architects to expand their scope of practice, currently and in the future. The history of landscape architecture and planning reveal an alternate wedding and separation of the two disciplines, not easily notated. To complicate the situation even further, each field espouses two or more philosophies of practice. Yet, the vanguard in most all planning and design fields appear in the 1980s to be moving towards more participation by affected parties, a real effort at consensus-building, and a commitment to see decisions through to implementation. The chapter begins with a description of the changing roles of planners and the causes for that change.

Changing Conceptions of Planning Role

The role of planner has changed markedly since its inception at the turn of the twentieth century due to a wide range of factors, such as (a) changing political scenes, (b) socio-

economic conditions, (c) realization of the finiteness of natural resources, (d) growing technologies of communications and transportation, and (e) the make-up of the planning profession itself. (Susskind and Ozawa, 1984)

Technician-Planner

The first concept of planning, advanced when the discipline was established in 1929, began with that of technical expertise. A technician-planner was conceived as an apolitical designer of plans and alternative futures who worked within a framework of goals, objectives, and resource limitations established by elected decision-makers. This concept of the planner's role assumes that the planner's "expertise," or analytic skills, can be used to discover the "best" solution to a particular problem. (Susskind and Ozawa, 1984, p. 8) Much of technical-type planning was physical landscape architecture or land use planning and is further described in this chapter on p. 22. This factual approach was sufficient when "all the components of the political and service delivery system... [operated] in harmony..." (Susskind, 1974, p. 139) Later, Benveniste pointed out the inherent political power planners could have as advisors to decision-makers. The role of technician-planner, however, could be particularly frustrating when the planner did not hold the same positions as individuals or organizations seeking their advice.

Advocate-Planner

A radical new view of advocacy planning was first promulgated by Paul Davidoff in 1965. The settings for many planners were no longer cohesive, but instead, fragmented and even characterized by competing individuals and groups. The government, Davidoff believed, should no longer be the sole party responsible for the development of plans and policies. Under the terms of the advocacy model, the planner is responsible for pointing out the biases inherent in the plans offered by opposing groups, informing the public about the concerns and views of his or her client group, and helping the client clarify and transform ideas into technically feasible alternatives. (Susskind and Ozawa, 1984, p.9) Advocacy does not include an interest in implementation, which is seen as government's role.

Mobilizer-Planner and Broker Negotiator

Four years later, in 1969, Francine Rabinovitz, a political scientist, added two more roles for planners in pluralistic and fragmented political environments: mobilizer-planner and broker-negotiator. (Rabinovitz, 1969) The former expands upon the technician role, here developing plans and policy recommendations, then working within the system to encourage support. As broker-negotiator, city planners would attempt to build liasons and consensus with compromises. Planners

could also serve as educators and communicators. Still, implementation was not included in these additional roles.

Generic Planner

By 1970, planning had moved away from its tie to the physical environment, and begun focusing on developing a common process and set of tools applicable to any policy area. (Alterman and MacRae, 1983) Generic planning was reflected in the growing policy analysis-type schools which focused less on substantive problems. Both substantive and generic planning are evident in today's planning education and practice. (Alterman and MacRae) Because of its roots in the design professions, "planning has traditionally been concerned with the design of alternative solutions," though more with their analysis than their generation. Recently, interest is shifting to implementation, both its liklihood and planners' direct involvement, "as through coordination, mediation, and service delivery" (p. 203).

Radical-Planner

Edging closer to the mediator-planner of the 1980s was the next planning concept which placed generic planning in the context of community. Given today's concern for participant involvement, it is hard to believe that in 1973 a call for decentralized planning and ecological sensitivity was considered radical. The ecology ethic was firmly

entrenched in the social scene by the 1970s. Coupled with "evolutionary experimentation," man would strive to be in natural harmony with the world as participant, not as master. The planner, as viewed by urban planners Stephen Grabow and Allan Heskin, would be an active, radical agent of change (1973, p. 112). This radical planner would actively facilitate social experimentation by the people in an age when change would take place in all realms, from economic and technological to political and religious.

The next step, from recognition of diverse participatory groups in the community to that of bringing the groups together for actual planning decisions, advances the evolving role of planners to that of mediator, the most recent concept in planning.

Mediator-Planner

Susskind and Ozawa's mediator-planner (1984) firmly endorses the implementation responsibility of "building and maintaining a durable consensus and in resolving disagreements" (p. 9). This new role goes beyond Rabinovitz's broker-negotiator. It "commits to a continuing role, seeking to ensure that the interests of all parties affected by a policy or a plan are taken into account from beginning to end" (p. 9). The skills utilized by successful mediators are similar to process-management skills already

practiced by planners. The art of persuasion and the creative accomodation of competing interests, coupled with the technical skills of design - the identification of options, the generation of alternative plans or policies, and the assessment of various alternatives - as well as a concern for the implementation of agreements or recommendations are common to the mediator and the planner. (Susskind and Ozawa, 1984, p. 5)

Regardless of subject-matter, there are three major functions performed by most mediators:

a. Catalyst for action

The very act of bringing in a third party presumes interest in doing something about the problem (p. 10).

b. Facilitator

In this function mediators schedule meetings, moderate discussions and encourage participants to maintain dialog.

c. Activator

In this role the mediator may manipulate media. As an educator he/she makes sure partricipants understand technical points. An active mediator proposes alternatives, and stays with the plan throughout implementation.

The role of mediator is shaped by the context in which negotiations take place as well as by the particular issues

at stake. (Susskind and Ozawa, 1984, p. 10) Mediated negotiation "can only occur if contending parties are willing to explore possible joint gains or to make concessions." (p. 14) Malcolm Rivkin, in Negotiated Development, (1977) lists a variety of project components that may be subject to discussion, accomodation and compromise. Most are found within projects typical for landscape architectual firms. They include:

a. Use and mixture of uses

b. Densities (both of people and of building)

c. Height, setbacks, orientation of facilities

d. Landscaping (internal) and buffering (to the outside)

e. Internal street systems and pedestrian pathways

f. Exterior design and materials

g. Lighting

h. Method of handling and retaining storm drainage

i. Method of handling and treating effluent discharge

j. Method of handling and treating solid waste

k. Compensation for impacts on services and land values in adjacent communities

l. Income and socioeconomic characteristics of residents

m. Staging and timing of development

n. Security provisions (both internal and in regard to adjacent areas) (p. 5)

Rivkin believes that overall site is not generally negotiable once financial commitments for the land have been made, though preservation of certain portions can be successfully debated and compromised. The development of PUD-type zoning in the 1960s opened the door for increased public participation in development schemes because of the public agency review and public hearing requirements. "Conditional" zoning or zoning by contract also opened the way for community-developer interests trade-offs.

Many problems have been raised with the new role of mediator-planner, no matter what discipline claims practice. Planners may not have authority to mediate public resource allocation disputes, especially when they are typically government employees and cannot be impartial. In reality, neutrality and success seem to depend more on the personality of the mediator and the trust he/she personally builds, than his employer. Also, because mediation is a voluntary process, not imposed by a third party, "mediated disputes are "settled when the parties themselves reach what they consider to be a workable solution" (Susskind and Ozawa, 1984, p. 13).

Others criticize the mediation role because it may not directly concern itself with the traditional planning role of re-distributing power and wealth. It can, however, be a

valuable tool for social reform.

Mediated negotiation has several advantages over litigation in dispute settlement:

a. It is a more democratic way of allowing disadvantaged groups access to joint fact-finding and information, thus giving them a better position to influence policy decision-making.

b. It is less expensive, most of the time, than lengthy litigation.

c. It helps to build bridges of understanding, rather than declaring a "winner" and "loser."

d. It is more concerned with fairness and efficiency than adhering to procedural rules.

e. The resulting agreements are likely to be informed and last. (p. 5)

f. It has a better chance of dealing with the real issues in the dispute.

As used here, mediation refers to a means of assisting negotiation between parties. It involves the use of a neutral person to facilitate mutual concessions to resolve disputes. Experienced persons, skilled at bringing people together, who act as neutral interveners call themselves mediators or facilitators. Because there is little differentiation in practice, the terms are used interchangeably here. Negotiation involves direct

interactions among parties. Mediated negotiation or active negotiation adds the use of a third party neutral to help parties overcome difficulties in communication. More than passive negotiation, active negotiation is concerned with the resolution process being fair and the quality of the outcome. A comparison of the new and more traditional methods of dispute resolution are found in Appendix A. The model of active mediated negotiation used in this thesis is an extension of the currently practiced role of planner as mediator.

Landscape Architects as Planners

The first part of this chapter has traced the development and evolution of planning over the last 30 years. At one time the line between planning and landscape architecture was very fine, almost imperceptible. Both landscape architecture and planning had common roots in the late nineteenth century with (a) recreational area planners, Olmstead, Shurtleff and Eliot and their concepts of parks, and with the influence of the "city beautiful" movement after the 1893 Chicago Worlds Fair; (b) the influence of the growing social concern for living conditions in crowded industrialized cities, epitomized by men like Lever, Cadbury and Howard who designed healthful new towns; and (c) keen interest in mid-nineteenth century America for landscape gardening. This concern translated into emerging

horticulture departments in the new land-grant colleges.

Frederick Law Olmstead, Jr. organized and headed the first university curriculum of professional training in landscape architecture at Harvard in 1900. In 1920, ten of the fourteen college departments which offered instruction in city planning were Landscape Architecture. The other four were Civil Engineering. During the next decade, city and regional planning split off and became separate disciplines, with a School of City Planning established in 1929. Landscape architecture then became identified as a technical profession "concerned with the formal design of small-scaled projects, most often for wealthy clients: (Fein, 1972, pp. 5-7). The philosophy of the new Harvard school as stated by its head, James Sturgis Pray, was:

> ...the fact will be continually borne in mind that the ultimate aim of city planning is the improvement of the environment of the individual, giving him a fair chance to win for himself a whole and useful life. Obviously, thus regarded, city planning does not lie wholly within the province of any previously established profession or activity (Adams and Hodge, 1965, p. 50).

In the 1950s and 1960s landscape architects were often called planners. In some universities, such as the

University of Illinois and Michigan State University, landscape architecture departments were associated with planning departments. In a 1951 article in Landscape Architecture Magazine, Hideo Sasaki clearly articulated the design process and "predicted the emergence of landscape planning as an important 'subspecialty' of the profession" (p. 19). Physical planning, or landscape planning as it often was and is called, grew out of landscape architecture. It is not to be confused with the earlier city and regional planning. The early, traditional landscape planning approach considers the

> "landscape as a series of habitats in which various forms of life reside, and that any changes made to the habitats should be judged in the way they would affect the living conditions...The objective of landscape planning is to ensure that landscape changes continue to provide habitat conditions that will accomodate the various forms of life, either in the existing pattern or, if the habitat conditions are changed, in a new pattern." (Hackett, 1971, p.1)

This type of planning rarely exists independently, but is now most likely linked to other forms of planning which must consider socio-cultural, economic and political factors. In a few cases aesthetic considerations dominate.

The 1972 ASLA study on the profession of landscape architecture classified attitudes towards landscape architecture as being along a "boundary maintenance--boundary expansion continuum" (Fein. p. 1-90) Survey findings showed that while practitioners, faculty and persons outside the profession wanted to expand types of professional concerns, relatively few wanted to expand their activities into new types of projects. Faculty, as a group, were more interested in expanding the scope of landscape architectural practice into areas such as regional resource planning than practitioners. At this time the profession felt it should become more involved in environmental concerns, which it eventually did. One of the 1972 study recommendations was to consider an amalgamation of landscape architecture with city and regional planning. No action has been taken to date on a national level.

Environmental Planning in Landscape Architecture

The 1960s ushered in twenty years of environmental concern with the publication of Rachel Carson's Silent Spring, culminating in the passage of environmental protection laws in Congress. Chief among these was the National Environmental Policy Act (NEPA) of 1969, which layed out the consequences of development through the requirement of Environmental Impact Statements (EIS). Correspondingly, the

era of environmental planning peaked in the late 1970s with landscape architects filling a need for organizational, methodological and graphic communication skills in a broad range of projects from site screening studies for interstate highways and electric transmission line corridors to regional landuse planning, and inventory and analysis of visual resources. (Simpson, 1985, p. 72) John Simpson, an environmental planner, believes in the mid-1980s major environmental planning issues are shifting from more quantitative, regional-based issues to more qualitative, specific issues that require a high level of technical and specialized expertise. (p. 77) Most landscape architects do not possess this kind of knowledge. Large, multi-disciplinary firms may force small landscape architectural firms out of the competition for projects such as "analysis of specific toxic substances, reclamation of hazardous-waste sites, and the quantification of acid rain causes and effects"(p.77). With the passing of the environmental wave of planning, Simpson believes landscape architects need to re-examine the role of planning they can comfortably fill, given their skills, traditional interests and the market demand.

The shift may have already occurred. A 1983 survey of professional planning and design firms revealed that "community design and planning projects represent more than

25% of the work done by roughly 90% of these firms. Much of the design work is being carried out by landscape architects, who, on the average, make up 66% of the total staff." (Shirvani, p. 56). The types of community design and planning projects these firms direct include:

a. Planned community and residential land planning

b. Inner-city redevelopment and infill development

c. Public physical planning

(1) Comprehensive

(2) General

(3) Urban design plans

d. Urban design guidelines

In all of these types of project developments, the landscape architect brings his unique commitment to working with the natural environment.

Shirvani believes landscape architects have made two important contributions to the art and theory of urban design:

a. Design of public open space, now expanded to integrate the natural-into-built environment and eventually conscious community planning

b. Communication with the public, now expanded to public participation in the design process (p. 57).

Planning in College Landscape Architecture Programs

As landscape architecture moves into the realm of politics and increased public participation, job opportunities for professional planners in the public sector have greatly declined, especially with the massive pull-out of federal monies in community development. Catanese, in his latest book, The Politics of Planning and Development, (1984) feels that "the intertwining of planning and politics means that planners and politicians must do things differently if implementation is truly desired. Planners must deal more adequately with the realities of politics and its inevitable need for compromise, consensus and coalition" (p. 23). Planning education, he states, will have to deal more with political matters if it is "to be an important factor in the successful implementation of planning as part of the political process..." (p. 215). It appears that landscape architecture and planning are again linked in their quest to be a part of the relevant design-planning world of the 1980s.

In both cases, however, professional education lags shifting project emphasis. Even with the Shirvani survey evidence, and the vocal expressions of many landscape architectural firms contacted during the course of this thesis, there is only a modicum of effort on the part of universities and the national ASLA to consciously ensure inclusion of planning

courses in the education of landscape architects. An understanding of the political process, yet another step beyond, looms as an unattainable goal for most landscape architecture education programs. John Lyle, in Landscape Architecture (1978), describes the study of landscape architecture as encompassing many areas of specialization, with various schools concentrating on one or more options, not all the same. The most common areas of specialization at that time were project design, urban design and regional landscape planning. The latter is also called "resource planning, environmental planning and resource analysis, and is the single specialized area offered by the largest number of schools" (p. 413). Without examining course outlines, it is impossible to discern whether this planning is mainly physical or policy oriented. If planning departments occur in the same college as the landscape architecture department, present program accreditation teams, on their own initiative, encourage a connection through specialization options, recommended electives or collaboration of projects. At this time, the broader concept of urban design planning is not considered a base skill.

The design process followed in Kansas State University curriculums, and typically found in most landscape architecture offices includes:

a. Planning

(1) Identification of interested groups and parties

(2) Program development

b. Data Gathering

(1) Physical site factors

(2) Social and cultural factors

c. Emergence of Design-Master Plan

d. Acceptance of Design by Client

Planning and the ASLA

Another method of confirming that planning is currently viewed as an integral part of landscape architecture, is to examine the national ASLA convention topics. These conventions are beginning to show more evidence of the profession's interest in understanding planning and politics as design tools to help advance professional success. The 1979 ASLA convention in New Orleans featured a general session with a U.S. Congress Representative from Nebraska, then the only urban planner serving in the U.S. Congress. And in 1984, Nea Carroll, Director of Touchstone, an environmental mediation organization in Seattle, Washington, gave one of the educational sessions on planning strategy for building consensus in conflict situations. William Sullivan, an instructor in Pre-Design Professions at Kansas

State University, reported his thesis findings on political participation by landscape architects at the municipal level, at an educational session during the 1986 convention. His discovery that although many contacts took place between landscape architects and city officials, the latter did not perceive the profession as having shared as many areas of concern with them as landscape architects thought they had. In this study landscape architects also felt they could have been more effective had they better understood the political process. (Sullivan, 1985)

ASLA workshop topics for 1987 included a two day seminar on the "Human Side of Management," which featured a session on creating effective work team management style. While not addressing the techniques of mediation, it focused on communication and leadership.

Planning and the Future of Landscape Architecture

Yet, getting politically involved and working with the public has not always been palatable to designers. The traditional designer was more often concerned with getting people to react correctly to their designs and plans, than soliciting their ideas or observing their use patterns in similar structures or spaces. Robert Sommer, a social scientist who has been a part of many design teams, believes designers must direct their creative talents to problems

that must be solved, to people who are going to be affected by the solutions (users and the public-at-large), and to other technical persons with knowledge of the problem. (Sommer, 1972) He believes it is with the users that designers can find allies to help them effectively enter the political arena. It is in this milieu that designers can have an impact on the significant political decisions of builders choice, and project location and use. (p. 134-5)

Two years later, in 1974, Lane Marshall, in a special ASLA task force on national growth, reiterated the same plea. Landscape architects have traditionally resisted political involvement and have thereby left themselves out of any decision-making. He believes as design professionals, landscape architects have an opportunity "to advocate quality, not quantity, to foster environmental planning as well as protection and preservation, [and] an opportunity to speak and be heard." (National Growth, 1974, p.152) To accomplish these goals means understanding and moving into the area of political process, as well as communicating in lay terms with the public.

It is understandable why landscape architects find it so difficult to move into a more aggressive planning role. In a 1975 study done by Isabel Briggs Myers, she related personality type preferences to careers and work. Designers

are more apt to have personalities that focus on design rather than working with people to solve problems. They are more likely to be intuitive and introverted, enjoying their work time alone. They prefer looking for possibilities, being naturally highly creative rather than totally relying on facts. Gallup suggested in his 1972 study for the profession of landscape architecture that because over half the membership and students were from rural areas and small towns, it probably inhibited acceptanace of the profession in urban areas. Furthermore, most of the schools of landscape architecture were not in urban centers. (Fein, p. 5-13) The Gallup analysis also pointed out other problems landscape architects traditionally suffer, such as attempting project administration, providing leadership in solving environmental problems, or even developing design goals themselves. Landscape architects, at that time, did feel confident in their technical skills. Gallup concluded the profession needed lots more confidence in its own abilities to provide project leadership. The fact it lacked financial and personnel resources did not help. (p. 5-5)

In his latest book, Action By Design, Lane Marshall describes the broad design decision-making process and the need for a design facilitator that "would be a prime mover, a mediator, a concilitator, and a communicator of ideas, concepts and viable alternatiave solutions to design

issues" (Marshall, 1983, p. 88). Historically, the facilitator role in design projects was filled by community volunteers. But as concerned participants in the design process multiply and the need for effective communication grows, a more professional leader is called for. Marshall also believes the decision-making process affecting the future of the natural and built environment will have to be restructured into a more cooperative effort between public and private sectors. He recommends the development of a broad community-based advisory board as the means to insure the collaborative effort throughout the decision-making process, along with public hearings. Some landscape architects are beginning to fill the role of Marshall's "design facilitators," but gaining design consensus with numerous concerned parties with diverse interests, is a challenge. How the development at Harvard University and the Conservation Foundation of models for negotiating conflict can help landscape architects when they choose to do their own mediating, or alert them when a third party is needed, will be discussed later in this thesis.

Randolph Hester, in his 12 Steps to Community Development, believes there is new opportunity for landscape architects to re-combine planning, design, development and management activities in small town-rural village environments, now increasingly prefered by urban Americans. (1985) Twentieth

century settlers are attracted to unique genius loci offered by the place. Once assimilated, they expect a high suburban-type quality of services. These living patterns demand environmentlly sensitive design and an understanding of the community. His twelve point design process describes the steps through which a designer can proceed for place-appropriate economic and community development. The role of landscape architects in place-appropriate community development is obvious: uncovering extraordinary and ordinary landscapes of local and outside value, describing the cultural history and lifescapes, discovering indigenous ideosyncrasies that can be marketed, preserving sacred places, introducing the community to its genius loci, and inspiring place-appropriate design choices. (p. 79)

Although Hester firmly advocates planning as part of the practice of landscape architecture, he does not articulate conflict resolution as part of the role. Decision on the final design choice is made jointly by the community and professional design staff at a forum where all the plans are evaluated.

The planning role used in this thesis encompasses traditional physical land planning, which now strongly considers socio-cultural, economic and political factors, with a conscious effort to involve users and concerned participatory groups and individuals throughout the design

process, even to the point of resolving conflict between these participants should it emerge.

Development of Environmental Dispute Resolution

The type of mediated negotiation landscape architects would most likely become involved with is environmental dispute resolution. Other models include labor, international and community disputes. Each has its own set of characteristics and sources of conflict. The first documented case of mediation in an environmental field came in 1973 on the Snoqualmie River Dam Project in the state of Washington. Eight months of mediated negotiation brought an end to 15 years of dispute over dam location and flood control. National foundations actively supported early efforts in environmental mediation activities. From the mid-seventies to the mid-eighties, the number of mediated cases grew from under 10 to 160. The organizations dealing with mediation have also mushroomed. In 1986, 133 states, plus Canada and the District of Columbia offered environmental dispute resolution services. (Bingham, 1986, p. 3) Besides direct mediation services, these organizations also offer training courses in the use of alternative techniques, newsletters, conferences and consultation services to various osrganizations, especially governmental agencies. The list of current organizations offering environmental dispute resolution services is listed in Appendix B.

In 1975 the Conservation Foundation made dispute resolution a major priority as implementation of environmental laws and programs began to bog down in endless controversies and polarization of positions. In 1986, Gail Bingham, Director of the Program on Environmental Dispute Resolution at the Foundation, published Resolving Environmental Disputes, A Decade of Experience in which she traced the history and growth of environmental mediation along with the challenges it will face in the future. Unfortunately, inference can be made that only some of the 161 documented cases involved landscape architects at some level of resolution. Bingham views environmental dispute resolution processes as another method of solving conflict, along with litigation, legislative change, or arbitration. Cases in environmental mediation are so varied, there is no one specific dispute resolution process that will work in all circumstances. There are general guidelines which will be discussed in the next chapter. Bingham's definition of environmental dispute resolution "refers collectively to a variety of approaches that allow parties to meet face to face to reach mutually acceptable resolution of the issues in a dispute or potentially controversial situation" (Bingham, 1986, p. xv). It can occur with or without a mediator, although all the cases she cited used mediators.

The particular type of environmental dispute resolution examined in this thesis for application in landscape architecture is that of active mediation. More than passive mediation, active is concerned with the fairness of the negotiation process and the quality of the outcome. It is also open to all parties whether sitting at the negotiation table or not, because oftentimes the participants are hard to identify, and their support is needed to make the agreement work. The process adapted for active mediation must also be judged as fair by the public-at-large; it must work efficiently to bring about resolution, and it must remain stable beyond the bargaining table.

Gradually states are using statutes to settle certain types of disputes through mediation. As of 1986, these included Massachusetts, Rhode Island, Virginia, and Wisconsin. Pennsylvania is considering mediation legislation. Agencies in the federal government are also experimenting with negotiated rule-making.

The mediated cases since 1973 fall into six broad categories, each of which include site specific and policy-level cases. (See p. 38). This study will concentrate on cases referenced to specific sites, as most applicable to conflict resolution in the design fields. As described by Bingham, the categories include:

Figure 2.1 Distribution of Environmental Dispute Resolution Cases, by Primary Issues

Issue	Site-specific	Policy
Land use	**70**	**16**
Housing and neighborhood impacts	18	-
Parks, recreation, trails, open space	11	1
Annexation	9	-
Sewage treatment and sludge disposal	9	-
Commercial development, impacts on commercial areas and larger community development planning issues	7	3
Port development and dredging	5	-
Highway and mass transit	5	-
Noise (airports and raceways)	4	-
Solid waste and landfills	3	1
Agricultural land preservation, growth control, and other long-range regional planning	2	4
Historic preservation	2	-
Wetlands protection (excluding coastal wetlands)	2	1
Sand and gravel operation	2	-
Division of private property	2	-
Sale of publicly owned land	3	-
Hazardous waste siting	1	7
Industrial siting	1	-
Natural resource management and use of public lands	**29**	**4**
Fishing rights and resource management	7	-
Coastal marine resources, coastal wetlands	6	-
Mining and mine reclamation	5	1
Timber management	3	1
White-water recreation	3	1
Offshore oil and gas exploration (OCS)	3	-
Other public land management issues	3	1
Wilderness	1	2
Wildlife habitat (excluding coastal wetlands)	1	-
Watershed management	1	-
Water resources	**15**	**1**
Water quality	4	-
Water supply	5	1
Flood protection	4	-
Thermal effects	3	-
Energy	**9**	**4**
Low-lead hydropower	3	-
Coal conversions	3	-
Large-scale hydropower	1	-
Geothermal energy	1	-
Nuclear energy	1	-
Other energy policy issues (e.g., alternative energy, energy emergency preparedness, regional energy policy)	-	4
Air quality	**6**	**7**
Odor	3	-
Stationary source emissions control	3	6
Acid rain	-	1
Toxics	**5**	**11**
Asbestos	2	-
Pesticides and herbicides	1	1
Hazardous materials cleanup	2	2
Regulation of chemicals under TSCA	-	6
Hazardous waste reduction	-	1
Chemicals in the workplace	-	1
Miscellaneous	**2**	**4**

Note. From Resolving Environmental Disputes (pp. 32-33) by Gail Bingham, 1986, Washington, D.C: Conservation Foundation.

The primary participants in the site specific cases were not always environmental groups pitted against the government. Bingham found environmental groups negotiating in 35 per cent of the cases, private corporations in 34 per cent of the cases, and federal, state and local governments involved in 82 per cent of the cases. (Bingham, 1986 p. xix)

Current Approaches for Environmental Conflict Resolution

By the mid-1980s, several different schemes for environmental conflict resolution emerged from various sources. Most use the same basic process, but feature their own unique methods for reaching resolution. The Delphi Approach concentrates on the pre-negotiation phase of mediation: creating structure and trust, engaging in fact-finding and isolation of the issues, and generating options and alternatives. The parties never meet personally. Instead a study organizer uses questionnaires to solicit ideas and interests in a series of rounds. (Miller and Cuff, 1986, p. 322) Bacon and Wheeler call their approach, Decision Analysis. Parties are identified, their range of choices defined, and the choice consequences estimated. (1984, p. 24) Fisher and Ury's Principled Negotiation described in their bestseller, Getting To Yes (1981) grew out of research at Harvard University on the Harvard Negotiation Project. It is a popular, common-sense, experience approach to acquiring human skills for dealing

with conflict. After understanding the procedural stages in mediated negotiation, principled negotiation becomes the next step in successfully using the process. Some of the methods currently used by landscape architectural offices in dealing with conflict are described in Appendix D.

The Susskind-Madigan model of Mediated Negotiation, developed in 1984, is not unique, but more extensively described and inclusive than many of the current techniques found throughout the environmental mediation field. Because of its general applicability, it is the one used in this thesis for comparison to an actual case study in landscape architecture.

Success in Environmental Dispute Resolution

How successful has environmental dispute resolution been? Does the case record to date give the design profession cause to take notice and actively analyze mediation methods for their own adaptation? "Mediation succeeds," says one proponent of the method, "when an agreement is ratified by the disputing parties and a process for implementation is in place" (Lee, 1982, p. 5). Measuring the success of mediated negotiation depends, of course, on the criteria chosen for evaluation. Some view the protection or gain of power as most important in any conflict. Others see the increase in number and breadth of interests of views

represented in the final outcome as a measure of success. A third perspective on success examines the way parties identify their common interests and work together for a solution.

Kai Lee lists four principle working criteria in her 1982 article, "Defining Success in Environmental Dispute Resolution:"

> a. Goals stated in the agreement are achieved
>
> b. Changes made in programs and procedures to ensure that the agreement's goals are met over the long term
>
> c. The parties are able to work together on problems affecting their agreement which arise after the agreement is reached
>
> d. The parties to the dispute and the intervener remain satisfied that the agreement and the process advanced their own objectives (p. 1)

Some consideration should also be given to the public interest. Although hard to define, many environmental dispute cases "involve the choice of whether and how to use public goods" (p. 6). Susskind believes the third party should advocate the public interest. Lee thinks participants could also be held accountable for the consequences of their actions. (1982, p. 6) Informal

mediation is the most difficult of all to include the public interest.

For any one case, parties and mediator may hold different views of the same conflict. Yet, says Bingham, they still hold common concerns:

> They care about the outcome of a dispute resolution attempt and the extent to which it satisfies both their interests and what they perceive to be the public interest. They care about the process -its fairness and legitimacy, its efficiency, and the extent to which they will be able to influence the decision. And, to the degree that the parties have or wish to have a continuing relationship, they care about the quality of that relationship and their ability to communicate with each other. (1986, p. 68)

The following two figures measure success on whether the parties resolved the issues in dispute as they defined them, and the stability of the agreement as measured by the extent to which parties implemented agreements after reaching them.

Figure 2.2 Success in Implementing Agreements, By Objective

	All cases	Site-specific cases			Policy cases		
		All	Decision	Recommendation	All	Decision	Recommendation
Agreement fully implemented	70% (50)	80% (43)	85% (34)	64% (9)	41% (7)	0% (0)	50% (7)
Agreement partially implemented	14% (10)	13% (7)	7.5% (3)	29% (4)	18% (3)	100% (3)	0% (0)
Agreement unimplemented	15% (11)	7% (4)	7.5% (3)	7% (1)	41% (7)	0% (0)	50% (7)
Subtotal—Cases with known implementation results	100% (71)	100% (54)	100% (40)	100% (14)	100% (17)	100% (3)	100% (14)
Cases with unknown implementation results	(32)	(24)	(12)	(12)	(8)	(1)	(7)
Total—Cases in which agreements were reached	(103)	(78)	(52)	(26)	(25)	(4)	(21)

Numerals in parentheses represent actual number of cases.

Note. From Resolving Environmental Disputes (p. 78) by Gail Bingham, 1986, Washington, D.C: Conservation Foundation.

Figure 2.3 Success in Reaching Agreements, by Objectives

	All cases	Site-specific cases			Policy cases		
		All	To reach a decision	To agree on a recommendation	All	To reach a decision	To agree on a recommendation
Agreement	78% (103)	79% (78)	81% (52)	74% (26)	76% (25)	100% (4)	72% (21)
No agreement	22% (29)	21% (21)	19% (12)	26% (9)	24% (8)	0% (0)	28% (8)
Total cases	100% (132)	100% (99)	100% (64)	100% (35)	100% (33)	100% (4)	100% (29)

Note. From Resolving Environmental Disputes (p. 73) by Gail Bingham, 1986, Washington, D.C: Conservation Foundation.

In 79 per cent of the site-specific cases studied, parties successfully reached agreement. In 80 per cent of the site-specific cases, agreements had been fully implemented.

A third measure of success may not be agreement on recommendations, but improved communication between parties. Perhaps dialog has ceased, or common information is not accessible to all parties. Sixteen site-specific cases in Bingham's study were communication-oriented. Of these, positive progress was made towards solving the controversy in slightly more than half. (p. 89)

Critical Views

Acceptance by planners for using this alternative method is far from widespread, however. Jon Berger in a 1978 article in Human Ecology stated:

> Environmental mediation..., however, is not a part of the planning process. Using the same approach (establishing a climate of good faith, identifying and legitimizing parties in conflict, providing technical assistance, helping create relationships to ensure the viability of agreements, and developing an implementation process), planners seek to avoid deadlock and the need of mediation by actually building "good faith" into the initial process of formulating plan alternatives. (p. 185)

Ideally, this is the way most all situations with potential conflict should be handled. Unfortunately, in many cases, the situation has gone beyond the point for this type of resolution. Berger's description of the planning role assumes many characteristics a third party intervenor would bring to the situation. An effective planner would, in fact, use mediation techniques without the title of mediator. Berger's objections may be academic.

Educating for Mediation of Environmental Disputes

Environmental mediation is a new concept to most landscape architects, though many have used some of the techniques throughout their careers. A few offices have used mediation services from organizations listed in Appendix A. Some landscape architects have been called in as third party intervenors or facilitators based on their long experience and respect in the profession. Courses are now offered by colleges and universities, including law schools that provide information about environmental dispute resolution alternatives. Four major programs exist where students can specialize in environmental dispute resolution: MIT, Harvard, The Program on Negotiation at Harvard Law School, The School of Natural Resources at the University of Michigan, and the University of Virginia. In addition, seminars, short courses and workshops have been held across the country.

CHAPTER THREE: METHODOLOGY

Intent

The purpose is to describe a process actually used for resolving conflict in a landscape design office. This process will then be compared to an active mediated negotiation process developed at Harvard University. (Susskind and Madigan, 1984)

Research Design

The methods currently being practiced by design firms to resolve conflict have never been documented and are largely unknown even between design offices. A dozen phone calls to established firms throughout the United States revealed a variety of philosophies and methods of resolving conflict. Because no universal process or theory exist, Glaser and Strauss' discovery method is utilized in the research method. (1967) The objective of grounded theory is not verification of a pre-determined idea, but generation of a theory from the data. Comparative analysis is used to further the discovery of grounded theory. It will be accomplished in this study by comparing the conflict resolution process of a site-specific case involving a

landscape architectual office with the generic process of active mediated negotiation by use of the following matrix:

Figure 3.1 THE MATRIX

PROCESS
Pre-Negotiation Phase
Identification of major interests and appropriate spokespersons
Selection of mediator or other type of neutral facilitator
Defining ground rules
Setting the agenda for negotiations
Identification of support resources
Engaging in joint fact-finding, including agreement on all facts of the case
Teaching parties techniques of negotiation
Generation of initial statements of concern or alternative design proposals
Negotiation and Consensus-Building Phase
Preparation of single negotiation text or master plan
Identification of underlying interests of negotiating parties (as distinct from their "position"), including incentives for settlement
Invention and presentation of potential trades
Final agreement signed by all parties
Post-Negotiation Phase
Methods invented to bind parties to agreement
Monitoring implementation of agreement
Renegotiation of any elements of the agreement
Evaluation of the negotiating process and the final agreement

Case Study Analysis and Use

Analysis of the case with the generic model should first verify if the particular resolution model chosen is workable using typical landscape architectural cases. Secondly, the comparison should illuminate steps in the process that landscape architectural offices might overlook, perhaps affecting the long-term success of the settlement. And thirdly, the study may reveal new creative methods for dealing with conflict in landscape design offices not evident by examining only the generic model. In the end, it may or may not be possible to determine if a more systematic process for resolving conflict can be developed for landscape design offices. The evidence presented here is only a beginning for looking at many other cases. It should offer an indication for further research direction.

Case studies can be legitimately utilized for research in several situations, two of which are evident in this study:

a. Where the problem demands further conceptualization of factors or functions affecting a given activity (Can successful resolution be predicted given the presence of certain basic steps in mediated negotiation?)

b. Where the problem is to determine the particular pattern of factors significant in a given case (What are the necessary steps in the mediated negotiation

process to bring about successful resolution?) (Franklin and Osborne, Eds., 1971, p. 204)

Data Collection

Case data was collected by telephone and personal interview, newspaper article research, and minutes or records from public and private meetings. Key participants in the project were first identified by whomever in the design firm directed the project or the conflict resolution aspect of the project. All the parties were then interviewed, including the mediator-negotiator. A check list, found in Appendix C, was utilized during case data-gathering to ensure sufficient and common information was collected from sources.

The format for the first round of interviewing was very informal, nearly conversational. It is not a highly efficient method of obtaining information, but has the greatest potential of achieving results: (a) establishing trust and confidence between interviewer and the respondent, and (b) stimulating the respondent to fully disclose a complete progression of the design project. Once several participants were interviewed, then a more directed, shorter interview took place with early respondents to make sure the needed information was obtained. The method for recording both telephone and personal interviews was by

note-taking. These were then expanded as soon after the contact as possible. The disadvantages with using such research methods were twofold: (a) it was sometimes difficult to listen and record conversations simultaneously, and (b) waiting until after the interview took place to fully record the conversation meant risking faulty recall.

To ensure accurate data was obtained, a time chart was then created, mapping out stages and steps in the process. Public and private meetings were noted, and the existence of minutes checked for those times. Once the dates were revealed, newspaper articles were researched. It is often necessary to interview participants again after the minutes are available for corroboration. Besides identifying the major parties, it is advantageous to check whether there are a few dominant groups or individuals making the decisions, regardless of their representation, or formal structure. This problem, alone, often makes bringing in a third party neutral highly desirable for improving the democratic process, i.e., allowing all parties, whether organized or not, to have equal say.

The project used has been resolved. The data was not collected by observation of on-going events and meetings, but by recollection and report. Time can cloud memory, especially if no record exists of the meetings. The only

insurance for the researcher is to interview as many project participants as possible to double check dates, agendas and action taken. Paul B. Foreman in his essay, "The Theory of Case Studies," suggests following several guidelines if case studies are to be judged as accurate research tools.

a. Materials must have direct application to the research problem at hand.

b. Materials must exhibit true occurrences. Validity of case documents can be achieved through:

(1). Use of independent investigators

(2). Use of outside sources, in this project corroboration by public meeting records

(3). Review by subjects or functionaries, in this project the descriptions were checked by Ralph Ochsner before inclusion in the thesis

(4) Use of self confrontation, the project must be believable, unified, and convincing

(5) Use of predictive discrimination, generalizations must be ultimately based on valid information

c. Materials must permit the balancing of all discoverable pertinent facts of behavior or action.

In any case it is difficult to know if the one chosen exemplifies a typical project from which

generalizations can be drawn. Factors such as subject-interviewer rapport, subject's lack of articulation, rigidity in interviewer's frame of reference, or his(her) lack of discrimination may interfere. It is hoped that the interviewer's awareness of these factors help in achieving objectivity.

d. If generalizations are sought, materials must reflect the location of a case on the continua of attributes essential for comparative analysis. Records need to show support for categorization and for judging the degrees of compared characteristics. Data must cover criteria to be compared.

e. Organization of material should, insofar as possible, separate or at least distinquish case data and their systematic interpretation. (Franklin and Osborne, Eds., 1971, pp. 193-8)

Case Selection

The case for analysis was chosen on the basis of:

a. Degree of conflict with which the design firms were confronted in taking on the project. Large number of participatory groups was desired.

b. Location. 120 mile radius of Manhattan best because of personal and telephone interviews.

c. How conflict was resolved. Use of third party.

d. Setting and type of project. Urban preferred. Whether typical for a design firm.

e. Time. Resolved no more than five years ago.

CHAPTER FOUR: DESCRIPTION OF CASE STUDY: FOUR THIRTY-THREE WARD PARKWAY

Justification for Case Choice

Many possibilities of cases existed which met the criteria for selection described in Chapter Three, METHODOLOGY. Every design firm contacted within the prescribed 120 mile radius had numerous examples, that were typical for other firms, also. A rezoning conflict in Kansas City, Missouri, was finally selected because of the dearth of information available through written reports, newspaper articles and accessibility of participants. Those initially contacted seemed willing to share their experience. The third party, brought in to help resolve the conflict felt this case, above many others he had been asked to negotiate, exemplified a mediation process.

Case Description

Prior to January, 1984, Saul Ellis, a Kansas City developer, acquired property containing three duplexes just west of the present Alameda Plaza Hotel on the south side of Sunset

Drive near Country Club Plaza. (See map on following page.) His purpose was to raze the existing dwellings and build luxury condominiums to sell from $285,000 to $500.000 per unit. He believed a real need existed for this type of development near the Plaza. Mr. Ellis had been a major developer in Johnson County for 20-25 years. He had successfully built quality, high price residential units near the proposed development in 1982. His wife actively marketed the units for sale.

An architectural firm with 20 years experience working for Ellis was hired to draw up plans for the new development. The architects proposed a nine story building at a height of 118 feet with 24 condominiums ranging in floor space from 2800 to 5000 square feet.[1] This would entail a change in the existing zoning from R-2a(two-family dwelling) to R-5p(high-rise apartments, limited district). A height variance was also needed because the limit for R-5 was 115 feet. After final presentation, Saul Ellis began informal contacts with the neighborhood for the next four to six months. Those residents contacted had property directly adjacent to the proposed development and, according to Ellis, were sympathetic to his plan. Later resistance from

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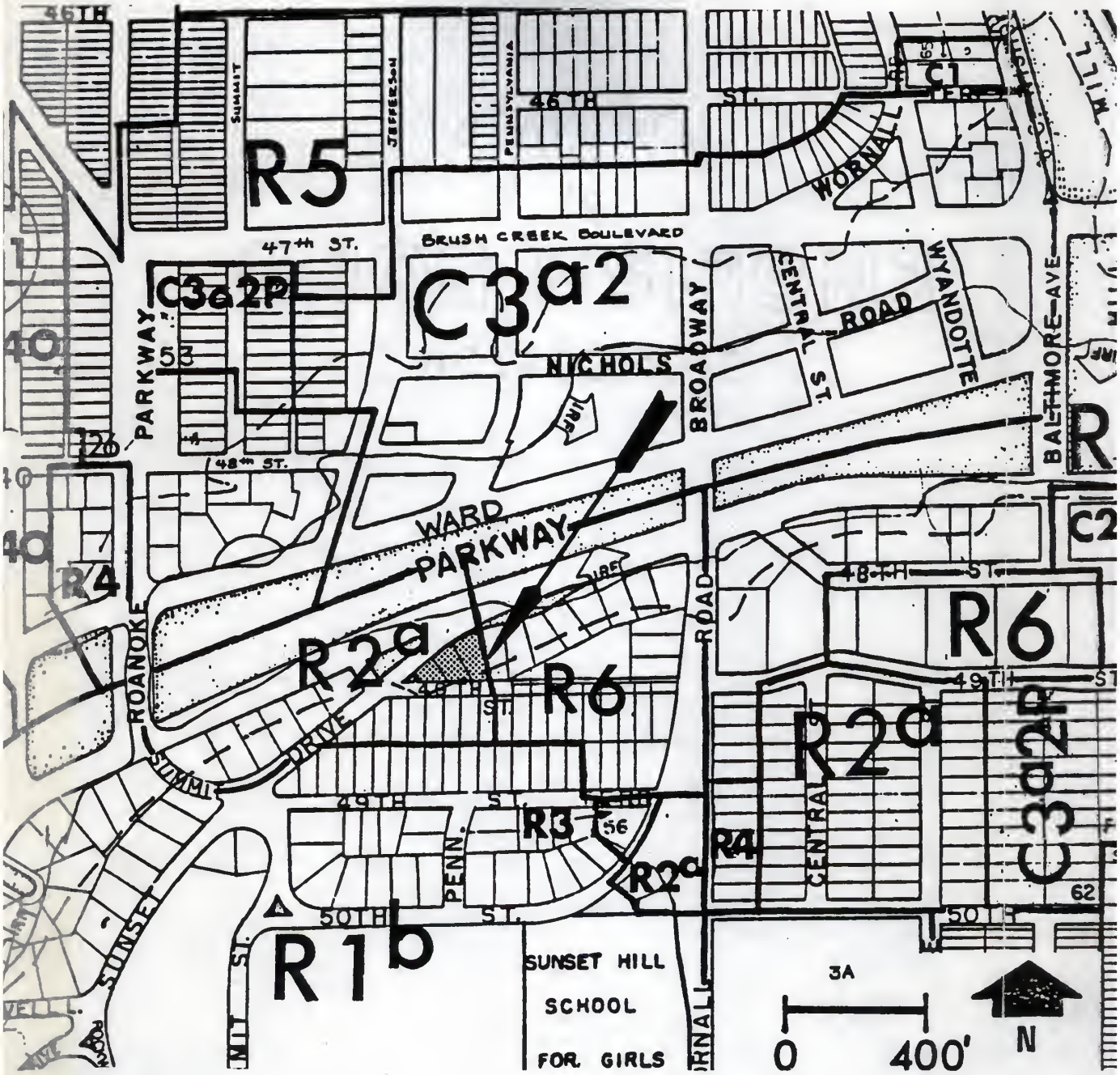
[1]The proposed building height is listed as 118 feet from Sunset Drive and 98 feet from 49th Street in Appendix "A," Staff Report, Case No. 9238P, March 6, 1984, prepared by M.S. Malik, Staff Planner.

Figure 4.1 MAP OF AREA SURROUNDING 433 WARD PARKWAY

(Staff Report, Case No. 9238P, 1984)



residents living in a wider area surprised him. The area south of the Plaza, however, had a history of protest over the construction of high-rise structures so near Country Club Plaza and the elegant Sunset Hill neighborhood. Ten years ago plans for constructing the Alameda Plaza Hotel, a J. C. Nichols project, had been contested in the Missouri Supreme Court. (Helliker, 1984, p. A-1) The neighborhood lost and no compensation was awarded for loss of view. Many of the people involved in that dispute were still residents of the area, but sorting out new issues associated with a new project from old battles would be difficult. Four thirty-three Ward Parkway would be the first luxury condominium-type development in the neighborhood, thus a precedent would be set. Several involved in the case maintained that historically Kansas City had a very free market approach to planning practice.[2] West of Sunset Hill, the neighborhoods were protected by restrictive covenants which successfully deterred developers.

January 2, 1984

On January 2, 1984 Ellis went to the Kansas City Zoning

[2]No specific recommendations were made in the Brush Creek Project Plan (1978) or the Country Club Area Plan (1980) for medium or high density development on the property in question. Twice, land use plan recommendations had been set aside for the Board of Trade expansion and an elderly housing project near the property. Six and one-half acres was rezoned in 1963 for construction of the Alameda Plaza Hotel just east of four thirty-three Ward Parkway. (Malik, March 6, 1984)

Board with a request for rezoning the property. His lawyer, Sherwin Epstein, suggested that Ralph Ochsner of Ochsner, Hare and Hare landscape architectural firm should be brought in as an expert witness for the rezoning request. Epstein identified for Ellis three key obstacles that could deter the development:

a. A majority of City Council votes (10 out of 13) would be needed to pass the request because the neighborhood would probably take the city to court.
b. The planning staff of the Kansas City Planning Department had issued a negative report for zoning change.
c. Vigorous opposition from the neighborhood that had opposed previous development of the Alameda Plaza could easily surface again.

The lawyer believed Ochsner could help defend their case by identifying any major problems in regards to contextural fit and view problems, and would provide design and planning assistance. This was the first time Ellis had used someone from the outside to aid in settling conflict. He believed it would ease the tension of possible litigation and allow participants to speak more freely with one another.

Ochsner had taken over the distinquished Hare and Hare

landscape architectural firm in 1979. His background in Regional and City Planning and a PhD in Public Policy Analysis and Administration suited him well to direct a company providing services ranging from garden design to conflict resolution. He was frequently called upon "to work with neighborhood groups, help developers and adjoining property owners modify original plans, and help attorneys and developers move projects through the approval process." (Mobley, 1986, p. 40)

Ochsner told Ellis that his proposed eight-story building plan would be difficult to defend because of size and the zoning regulations which would be technically violated. Ellis was advised to redesign the building within urban-design guidelines which were consequently developed by Glen LeRoy, an urban designer at the University of Kansas who would be presumably unbiased. The original design firm of Ellis, Wood, Smith and Carlson was retained with the understanding that redesign would be within LeRoy's guidelines.

At this point, Ochsner hoped to change the project to bring it in line with other Plaza developments and prevent additional high rise development along Ward Parkway. The key design element affecting sales would be the units' orientation towards the Plaza. The building elevation must

also be consistent with the existing elevation of housing developments on the same side of the site. Ochsner and LeRoy worked hard to represent the highest quality design possible. They wanted to insure the re-design represented a strong anchor at the corner of 48th Street and Summit Drive to prevent additional high-rise development along Ward Parkway. Four thirty-three Ward Parkway would become the strong physical element that would symbolize entry into the Plaza.

January 24, 1984

The first unofficial public meeting to acquaint area residents with the proposal was conducted by Ellis on January 24, 1984. Over 60 people showed up at the Alameda Plaza Meeting Room to see the drawings and express their views.[3] Conflict soon emerged. Ochsner sensed that the opposition to the project was neither unified nor organized. Quickly he attempted to transfer the conflict from opposition vs. proponent to the various "camps" within the opposition, thus dividing them. One faction was against any multi-family development. Another was sympathetic to a use change for the area, but at a lower density (or shorter building). Still another group was unhappy with the

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[3]This progression of events was related by developer Saul Ellis and Ralph Ochsner. LeRoy was brought in for re-design consultation before the public meeting so that the revised drawings would initiate opportunity for discussion.

project but did not want any conflict. Others desired some control over the building design. Ochsner believed early on that compromise on the design would be better for his client than costly, long-term litigation. He also realized that design adjustments would be necessary for the project to be palatable to the City and neighborhood.

Ochsner, at this point, was hired by Ellis to obtain project approval as closely to the original proposal as possible. Professionally, Ochsner wanted to develop a high quality project. He had accepted the project only under the condition that the design be modified and improved along urban-design guidelines.

January 25-March 5, 1984

After the January 24th meeting, Ochsner began to establish direct lines of communication with the opponents to the project. He would not let Ellis meet with them again, nor the attorney, Sherwin Epstein, because of fear they would polarize the issues, cutting off the possibility of a creative solution. He met separately with opposing groups to discover their concerns, while building his reputation for being professionally competent, reasonable, and willing to listen. He did not pretend, at this point, to be a neutral mediator. In fact, Ochsner had no aspirations for resolving the conflict. He met the opposition in direct

confrontation as an advocate of his client's position.

Early in 1984 the opposition consisted of an ad hoc group of neighbors who lived in the Sunset Hill area just south and southwest of the Plaza.[4] Among those who actively participated in opposition to the project were prominent Kansas Citians, Craig Sutherland, President of Sutherland Lumber; Irving Hockaday, Executive Vice President of Hallmark Cards; and Landon Rowland, President of Kansas City Industries. William Shapiro, an attorney whose property was just south of four thirty-three Ward Parkway, was very vocal in his opposition to the development.[5] There was never a single attorney, however, who represented all the neighbors. At various times each used their own legal advisor. It became apparent very early in 1984 that the conflict could be ensnared in lengthy and costly legal battles. At the last, the group would hire Harland Barth, a Kansas City Planning Consultant. Their concerns varied:

a. Increase in population density

b. View restrictions onto the Plaza

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[4]By the conclusion of the conflict, neighbors, with the help of Mrs. Lawrence Starr, had organized themselves into the Rockwell Homes Association. There are now two other neighborhood organizations in the area, the Sunset Hill Association and the Loose Park Association.

[5]His house was one of three or more most likely to have their view of the Plaza negatively affected. (Malik, March 6, p. 5)

c. Traffic increase in the neighborhood

d. Possible reduction of property values

e. Continuation of high rises down Ward Parkway

f. Height (they hoped for four stories)

g. Contextural design fit with rest of neighborhood

During this time Ochsner had two studies completed, a traffic analysis and appraisal study, to aid in later discussions. Change in property value due to loss of view was not proved. The study showed no conclusive connection. Neither were adverse traffic problems projected. (Ochsner, April 28, 1987) Ochsner also contacted the Jackson County Historical Society to explore their support or objections to the project.

Meanwhile, some of the neighborhood opponents reportedly signed up for the projected condominiums. (Ochsner, April 28, 1987)

March 6, 1984

On March 6, 1984 the Kansas City Planning Commission held a Public Hearing.[6] The meeting opened with a staff report

[6]The City Planning Commission then makes a recommendation to the City Council. If it is favorable, which this was, then an Ordinance is introduced to the City Council by the Director of City Development, who then, acting as Secretary of the City Planning Commission, gets a first reading.

from Mr. M.S. Malik, Staff Planner for Kansas City Development. He spoke generally in favor of the proposed land use and recommended approval. He felt "any significantly negative impact could be eliminated or minimized when final plans were prepared; by shifting the location of the building or reducing its height." (City Plan Commission Minutes, March 6, 1984, p. 9) The issues identified by the Staff Report were as follows:

a. Whether the proposed use was appropriate at this location

b. Whether the proposed rezoning would trigger requests for similar development of adjoining properties

c. Whether the proposed development would have a significantly negative impact upon adjoining properties

d. What considerations would need to be kept in mind while reviewing this and other proposals for development

Miller Nichols, Chairman of the Board, Nichols Company, appeared in support, seeing four thirty-three Ward Parkway as a test market for future executive housing which he felt was badly needed in the city. Loss of view for those residents directly south of the development did not concern him. (p. 10) Also speaking in support of the project were:

Clarence Roeder, J.C. Nichols Co.

Doug Patterson, J.C. Nichols Co.

Harod Tivol, President, Plaza Association

Jim Krause, Realtor

Appearing in opposition to the project were:

Steven C. Taylor, Attorney

Craig Sutherland, Area Resident

William Davis, Area Resident

Malcolm Drummond, City Planner, Harland Bartholomew and Associates

William Shapiro, Area Resident

Jim McCuff

They doubted the great need at this time for condominiums in the area, and did not want to see this type of development intruding into a single-family neighborhood. They also believed the rezoning request would be inconsistent with the Area Plan. Other nearby residents were sympathetic to a use change for the area, but not high-rise condominiums. (Ellis did not appreciate the opposition and media's referral to a nine story building as "high-rise." To him, in the context of Kansas City, nine stories was "low-rise.") The City Planning Commission approved the rezoning request,

but because some members believed views towards the Plaza should not be altered, they attached the following seven conditions: (Malik, Community Project/Zoning Ordinance Fact Sheet, Case No. 9238-P, March 19, 1984)

a. Revision of the site plan so as to show:

(1) Dedication of additional right-of-way for 49th Street with an appropriate turn around.

(2) A clear 20 feet front yard along Sunset Drive.

(3) Finish floor and top of roof elevations.

(4) Two cross-sections through the lot and buildings

(5) The street elevation of the building, and its relationship to the Alameda Plaza Hotel, and the residences to the West fronting on Ward Parkway.

(6) The "eleven points" clearly defined.

b. Provision of a plan showing existing conditions.

c. Dedication of additional right-of-way for the widening of 49th Street to a 50 foot ROW, with an appropriate turn around on public right-of-way.

d. Improvement of 49th Street to residential street standards with curb, gutter, and sidewalk at the developer's cost.

e. Donation of the appropriate amount ($2500+) to the Parks Department in lieu of parkland dedication.

f. Replatting of the area as a subdivision in accordance with current City standards and regulations. g. Reduction in the height of the building to 910 feet from its present elevation of 956 feet. This would reduce the project from eight and one-half stories to about four and one-half stories)

March 7-June 12, 1984

Ochsner then had the plans redrawn in his office, consistent with with what the Commission had recommended. According to Ochsner, he met with Mr. Sutherland to discuss how the controversy might be resolved through joint participation with the neighborhood associations and residents in a process to review the urban plan for the area. (Summary of the Plans and Zoning Committee Meeting, June 13, 1984, p. 17) During a subsequent meeting, Saul Ellis agreed to cover the cost of that type of mediating activity. Ochsner then met with Sutherland again, shortly before Sutherland's attorney advised him not to participate "in that kind of effort, to take a look at the planning framework for the area and to explore what the alternatives might be." (p. 17) At this point, Ochsner realized that he was talking to only one of several parties, perhaps not representative of the opposition. He then set up a meeting in his office with the presidents of both neighborhood associations to see if they would be willing to meet with the developer, Saul Ellis, to

set up an evaluation process. He explained that the associations "would have to exert some initiative and arrange those meetings." (p. 17) He did not know of a single attorney who represented all of the area, making it difficult for him to know who to talk to. Apparently neither association volunteered and consequently the meetings were not held.

June 13, 1984

June 13, 1984 the request went to the Subcommittee of the Kansas City Council on Planning and Zoning. Reverend Emmanuel Cleaver was chairman at the time.[7] Procedurally, the applicant(Ellis) presents his case first, the opponent, secondly. Ellis's attorney, Sherwin Epstein, stated that all the conditions had been met except the height reduction. A limit of 910 feet in elevation would only allow a four story building with twelve units, hardly economically feasible. Because the cul-de-sac was to be widened, there was no room to add units on each level.

Ochsner then presented his arguments for the proposal. He

[7]Cleaver's background is particularly interesting to this case. From political activist, he founded the Kansas City chapter of the Southern Christian Leadership Conference in 1972, he turned to religion and is minister of the St. James-Paseo Methodist Church, besides being a City Councilman since 1979. The last few years he has tried to build a broader base of political support, and in so doing has advanced the case for coalitions and compromise. (Popper, 1987)

referred to the design guidelines prepared by urban planner, Glen Leroy, in describing the project's design. The revised plan would meet all the zoning requirements for R-5, in fact, would achieve far less density than allowed. The proposal would not be inconsistent with the city's comprehensive plan, nor would the proposed use be inappropriate. The traffic impact would be negligible, and according to statistics, the parking would be generous. (p. 11) He then attempted to assure the residents that because of this one case, not all of Sunset Hill would be re-zoned. Neighboring residents believed a need did not exist for high-priced condominiums, said Ochsner, because current condominium conversions of old buildings had low occupancy. This was hardly comparable to a situation involving new construction. There were only two new structures built for condominiums in the area as of June, 1984. Over a four year period, the first sold only seven of its 20 units. The second six unit construction had been only recently completed by Developer Ellis. (Sutherland, Memorandum, 1984, p. 17) A real estate appraiser, using data from the Alameda Plaza Hotel construction, supported Ochsner's contention that the market value of property would not be adversely affected by a loss of view of the Plaza.

Steve Taylor, representing Craig Sutherland, referred to a memorandum opposing the proposed development which had been

sent to Mayor Richard Berkley and members of the City Council from his client.[8] The 28 page document was signed by Mr. Sutherland, William Shapiro, Irvine Hockaday, Jr., and William Davis. Taylor, so confident of the opposition's position, had given this report to the City Planning Commission Committee a week ahead of time, thereby allowing Ochsner ample time to review the document and prepare a case meeting many of the objections.[9] The opposition, although surprised at the content of Ochsner's presentation, still voiced their objections vigorously:

a. If rezoned, more applications for high rises in the Sunset Hill area will be filed.

b. A taller building, such as the proposed development, will not effectively terminate a progression of high rises along Ward Parkway.

c. The density should be kept medium to low in the area, consistent with the current Area Plans.[10]

d. The proposed development does not maintain a

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[8]Craig D. Sutherland, Memorandum in Opposition to Proposed Rezoning, Plans and Zoning Committee, City Council, Kansas City, Missouri, June 7, 1984.

[9]Ralph Ochsner, April 11, 1988.

[10]Low density consists of 0-8 dwelling units/acre, medium density is 9-28 dwelling units/acre, and high density is anything over 29 dwelling units/acre. The subject property is .67 acres with 24 dwelling units proposed, clearly high density. (Torkelson, Inter-Departmental Communication, 1984)

"symbiotic, complementary relationship and balance that exists between the Plaza as a residential and the Plaza as a commercial area." (Summary of the Plans and Zoning Committee Meeting, June 13, 1984, p.11)

e. The increased vehicular traffic load would not be insignificant.

f. Other areas, namely 49th Street to 51st Street, would be more appropriate for this type of development.

g. The developer has refused to discuss the issue in a public forum.

h. Views of the Plaza would be ruined for several residents.

i. Ellis has built other three story projects near by that are apparently economically feasible.

The thrust of the Memorandum was that a high rise condominium-type development was inappropriate for high quality, low density residential areas such as the current Sunset Hill neighborhood. Although the City Plan Commission had opposed the re-zoning request, it did so under several conditions, one of which was reducing the height to four and one-half stories or 910 feet. This report felt the developer would continue to seek approval of a nine story building once the case got to the Plans and Zoning Committee of the City Council. The Memorandum includes letters by authors of both the Brush Creek and Country Club Area Plans

supporting the opposition's contentions. Low residential density of the subject property is called for in the Country Club Area Plan and medium density residential in the Brush Creek Project Plan. (Sutherland, 1984, pp. 4 & 7)

The City, states the report, "should consider the availability of other locations for a development where the effect of such a development will have a negative impact upon the adjoining areas." (p. 11) This type of "expansion would result in the erosion of one of the finest residential neighborhoods in the area." (p. 22) The Memorandum also contains a letter by professional land planner, Malcolm C. Drummond, a former advisor to the J.C. Nichols Company in the Alameda Plaza project. Mr. Drummond reiterates the objections of the opposition. (Exhibit L, Sutherland, 1984)

The June 13th Plans and Zoning Committee Meeting continued with William Shapiro contending that no other meetings had been held with the opposition since the January 24th meeting at the Alameda Plaza. The developer, he stated, had refused an invitation to discuss the issue at a public forum.[11] Mr. Epstein then responded by saying the public forum referred to was a radio talk show and he felt it

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[11]Ochsner later denied this was the case and described his meetings with Craig Sutherland. (p. 17)

inappropriate to discuss the matter of a zoning request publicly, before the City Council had an opportunity to hear both sides of the issue. (p. 15) He also presented copies of two letters written to the home associations stating the developer's "willingness to participate in neighborhood plan progress." (p. 15) Mr. Shapiro still maintained that about six homes had not been contacted. He said if they were deprived any rights, they would consider litigation. (p. 15)

Councilman Cleaver then requested the opposing parties to step outside and attempt to arrange a meeting where they could more fully discuss their differences and try to reach a compromise. Mr. Epstein wanted to make sure that the opposition represented all the people in the area before he would agree to meet privately with Cleaver. One person, who owned property adjacent to Ellis's development, then went on record as favoring the development. (p. 16) The participating parties agreed, then, to meet privately and attempt to reconcile their differences.

Also at this June thirteenth meeting of the Plans and Zoning Committee, Mr. Malik reported that a "Petition of Protest of Zoning Change had been filed and that it had been determined not to be legally sufficient." (p. 17) If successful, the Protest Petition would have required a three-quarters vote

of the City Council for the re-zoning request to pass. Only 9.34 per cent of the residents in the land area within 185 feet of the property in question had furnished signatures for the protest. 10 per cent was required. (p. 17) The residents found it difficult to obtain signatures because of tracking down residential landowners. Because the City Attorney ruled the petition invalid, the developer now only needed a simple majority in the City Council to pass the zoning change. Ellis believed he had nine of the 13 City Council votes at this time.[12]

June 18-20, 1984

Five days later, on June 18th, the Assistant City Attorney, Kathleen Hauser, wrote the Plans and Zoning Committee that she thought the Petition of Protest was "legally sufficient provided that the City Development Department certifies that the required percentage of property owners have executed and acknowledged the Protest." (Inter-Departmental Communication) By June 20th, the opponents had obtained enough signatures to make the protest valid.

June 21-July 3, 1984

Cleaver then met separately with Ellis and his legal representatives to see how much flexibility they would be willing to exercise versus the desires of the opponents.

[12]Ralph Ochsner, April 11, 1987.

Following those meetings, he met with the neighbors and their representatives to test their willingness to compromise. Over a two week period, ten meetings were held, some with Ralph Ochsner. (Cleaver, 1987) Because the Planning Commission placed conditions on the project, under Kansas City law the applicant has an unlimited time period for re-submittal of the amended plan to the City Council. Ochsner took advantage of this law by changing the original design to six and one-half stories and working politically with neighborhood leaders to defeat any major opposition. A private meeting was held in Councilman Cleaver's church to seek a compromise. Attorneys from the opposition were present, as were Cleaver and Ochsner. Ochsner had developed a fully detailed negotiating position, listing possible trade-offs. His outline was enlarged so others at the table might read it. According to Ochsner, Cleaver could then see that the developer was ready to compromise. The opposition refused to negotiate because they thought they had the votes to block the project. (In most cases Councilman Cleaver has found the developer more flexible than the surrounding residents, as occurred in this instance.) (Cleaver, April 24, 1987) There was no personal animosity. Cleaver, recognizing the inflexibility of the opposition, told Ochsner to go back to the original plan of nine stories.

However, soon afterwards, Saul Ellis decided to work with the neighborhood while they were awaiting approval of the City Attorney's decision on their Protest Petition. By then, most agreed that six and one-half stories was a good height, and that they would work with Ralph Ochsner on the architectural and contextural fit of the structure to the site. Perhaps Ellis was swayed by Ochsner and LeRoy that better design could be achieved by lowering the building height. The prominence of the opposition also might have convinced him to try and regain their trust, especially if he intended to construct future housing south of the Plaza.

Ochsner then went back to the Plans and Zoning Committee and persuaded Chairman Cleaver that representatives of the opposition had come up with a compromise, made in good faith. Although they had rejected it at the private meeting, Ochsner and Ellis believed it was in the best interests of the neighbors not to force a return to the original proposal of nine stories.

July 5, 1984

On the July 5th meeting of the Kansas City Council, Councilman Cleaver asked that the rezoning request for four thirty-three Ward Parkway be amended so that the new plan would call for six and one-half floors. (Proceedings of the Council, July 5, 1984, p. 35) There was lengthy discussion

over whether additional time should be granted the opposition to obtain more signatures to validate their Protest Petition. Only that day, July 5, had the Law Department furnished them with a revised map, showing what areas had to be covered for the petition. Apparently, public right-of-ways could not be included in the 185 foot circle surrounding the proposed zoning change. Several councilmen felt time was of the essence, and a decision needed to be made immediately. If the applicants could garner ten votes, the Protest Petition would have been academic. The vote to hold the amendment on the docket one week failed, eight to five. (p. 67) Councilmen then argued over the merits of voting on the original petition for eight and one-half stories, or the compromise, suggested by Councilman Cleaver, at six and one-half stories. A vote calling for the original height produced eleven ayes and two nays. The amended version was than voted upon, and passed with thirteen ayes. (p. 76) Ellis said he was satisfied with the results. He would still be able to construct 24 units, and he knew of over 100 people who were interested in buying the condominiums. (Helliker, 1984, p. A-1)

July 17-27, 1984

A threatened lawsuit over the Protest Petition followed. On July 17th the neighborhood filed a Notice of Intent to file Referendum Petitions. In the first stage, 100 valid

signatures would be needed to delay the implementation of the Ordinance from ten days to 30 days. Referendum petitions would have to be filed by August 14th in the second step when reportedly 8,000 signatures of Kansas City voters, who voted in the last mayoral election, would be needed to place the re-zoning issue on the November ballot. (Helliker, 1984, p. A-4) However, the Kansas City, Missouri Board of Election Commissioners found only 92 of the 111 signatures valid. On July 27th a Supplementary Notice of nine signatures was added and tendered for filing. The Acting City Attorney refused the additional signatures.

July 30, 1984

On July 30th, Attorney Jeffrey Marcus, representing an element of the opposition, wrote City Clerk Richard Brenneman asking why the rest of the signatures were not accepted, including the supplementary signatures. He indicated a writ of mandamus would be filed unless an immediate reply was received.[13](Marcus, 1984) For some unexplained reason, the Protest was never carried out.

Apparently, Ellis was aware that Attorney William Shapiro, a resident of Sunset Hill and representative of the

[13]Mr. Marcus could not be located. According to his former law partner, M.D. Clayman, he was disbarred in 1985. (June 30, 1988) Neither could the City Clerk's office locate a reply from that office to Mr. Marcus. (June 30, 1988)

neighborhood, could stop the project by seeking an injunction. If so, Ellis would demand a bond for the total expense due to a delay in the project. It would be highly unlikely the opposition could come up with a bond.

1986

The project ultimately broke ground in 1986. Soon afterwards William Shapiro and Frank Altmann petitioned the Board of Zoning Adjustment to halt the project because the actual structure being built did not conform to the compromise plan passed by the City Council, especially in regards to the building height and pool placement. They failed. The compromise plan held. (Altmann, 1986)

Currently

There are now three home associations. The Rockwell Homes Association, formed by Mrs. Lawrence Starr, has won several cases using the residents own personal lawyers or the residents themselves, if they happen to be attorneys. Mrs. Starr feels there was complete agreement in the end over four thirty-three Ward Parkway, and is satisfied with the results. William Shapiro is now the president of the association.

A few people were left bitter after final settlement. (Ochsner, April 11, 1987) Some feel the case was decided

before it ever went through formal approval. They feel the City Staff Report was favorable because the office was greatly influenced by the rich and powerful, (Shapiro, 1987) although they were in abundance on both sides of the conflict. Urban design proposals, they contend, were never taken under serious consideration, and Malik, the City Planner, they believed, consistently acted in a "generic way" about new proposals in the Plaza, i.e., he sought approval of all development.

Sutherland believes the opposition should have brought in more expert witnesses, and sooner, especially legal advisors. His concern was that four thirty-three Ward Parkway should be a high quality project, one that would maintain or improve surrounding property value, and esthetically fit in with the Plaza and Sunset Hill neighborhood. The neighbors thought they learned a hard lesson about the need to unite and organize before a case like this evolved. Some have since moved away: Davis to another state, Rowland and Hockaday to other parts of the City.

Councilman Cleaver wanted to balance City growth and development without violating neighborhoods. He believed growth in the City was possible without greed, but he also believed procrastination in debating this particular re-

zoning request was a waste of time. (Proceedings, City Council, July 5, 1984, p. 48)

Ochsner and Ellis were satisfied with the results. LeRoy, the planning expert brought in by Ochsner and Ellis, believed the Plaza Area Master Plans were just not definitive enough on the type of development to be encouraged. (LeRoy, 1987) He felt the City Planning Report did not address the neighbors' concerns for maintaining a viable, cohesive neighborhood, only mentioning the need for multiple family housing. He did feel Ellis was more sensitive to the needs of surrounding neighbors than other developers showed in the past.

By July 3 of 1988, four thirty-three Ward Parkway has long since been completed. Occupancy commenced in November, 1987. With the two penthouse units, there are 26 in all, spanning six and one-half floors. Two additional floors are devoted to entry, a Commons Room, office, guest rooms, spa, and parking. Eight units have been purchased. The prices range from $395,000 to $625,000. Meanwhile, construction is in progress for the twin Alameda Towers by the J.C. Nichols Company directly south of the Alameda Plaza Hotel. 141 luxury condominiums will hit the market early in 1989 with prices ranging from $270,000 to $1.2 million. In addition, four other projects surrounding the Plaza are in various

stages of development, all aimed at providing high-price, executive housing. Their ultimate success is anyone's conjecture.

The neighbors unsuccessfully fought to have the Towers project redesigned, and major access from Wornall Road rather than 49th Terrace. Their lawyer was Sherman Epstein, this time representing the Opposition. Once again residents felt their neighborhood threatened with increased traffic and the belief that over 100 high-priced condominiums could depress the value of single-family houses several hundred feet away. (Lester, 1987, p. 3K) Councilman Cleaver, as Chairman of the Plans and Zoning Committee of the City Council, could see no viable alternative for project access due to the hilly terrain. In other words, he once again gave in to the developers.

CHAPTER FIVE: DESCRIPTION OF MODEL

The model for a dispute resolution process chosen for testing with the case study described in Chapter Four, is the Susskind-Madigan generic process of mediated negotiation. Because of its proven general applicability for environmental conflict, it offers the best opportunity for use in landscape architecture and design offices. Lawrence Susskind and Denise Madigan are both with the Program on Negotiation at Harvard Law School, an applied research center dedicated to improving the theory and practice of negotiation and dispute resolution, founded in 1983.

Susskind and Madigan studied over 20 public sector mediation efforts before outlining their own generic steps. They found that often past efforts did not include a sufficient game plan at the outset of the process. Theirs includes three more or less distinct phases: (a) a pre-negotiation phase, which involves defining and convening the negotiations and encouraging the disputing parties to come

to the negotiating table; (b) a negotiating and consensus-building phase, which focuses on the substance of the dispute; and (c) a post-negotiation phase, which deals with implementation, monitoring, and enforcement of agreements. (Susskind and Madigan, 1984, p. 184)

The Susskind-Madigan model consists of the following steps within each phase:

a. Pre-negotiation

(1) Identifying major interests and appropriate spokespersons

Depending on how many participants there are, it may be necessary to divide into cohesive representataive teams. This can prove especially difficult when stakeholders cannot be identified at the outset, when business and citizens find it hard to donate the necessary time or when parties want to wait and see if the process will work before becoming involved. Experience has proved that participants often have to be continuously recruited throughout the mediation process.

(2) Selecting a mediator or other type of non-partisan facilitator

Professional facilitators may be necessary to bring in if parties have never negotiatied face-to-face. Susskind and Madigan recommend the use

of mediated negotiation when:

(a) Parties are numerous and hard to identify

(b) Access to traditional decision-making processes is difficult for one or more of the salient parties

(c) The outcome is dependent on controversial value judgments, and gaining a community consensus would be effective for resolution

(d) The community-at-large cares about the outcome

(e) The participants might be likely to deal with each other in the future

(f) Implementation would be adversely affected by dissatisfied parties

As stated before, because of the diversity of specific situations, no comprehensive theory exists about when and how to use the model, other than the above guidelines.

(3) Defining the ground rules and protocols for negotiation

These codes tend to be formal in the beginning and evolve with situations as they arise. They outline rules of confidentiality and ways of dealing with the press, the functions of technical support staff and documentation procedues. The

complexity and sensitivity of the project dictates how extensive they need to be.

(4) Setting the agenda for negotiations

A necessary step before proceeding any further, is getting parties to agree on the problem(s), sometimes a difficult task.

(5) Identifying and allocating resources to support negotiating efforts

Who will pay and who will be paid for providing or receiving technical assistance? The mediator might need support staff. This problem will be further addressed in Chapter Five, FINDINGS.

(6) Engaging in joint fact-finding and agreement on all factors of the case

Determining what information is needed and gathering materials may continue throughout the whole process. It is also necessary for all to agree on the facts. Problems surface when some of the parties have very limited knowledge of the issues under discussion. Those parties representing governmental agencies may tend to monopolize and manipulate discussions because of better preparation.

(7) Training parties or teams in techniques of negotiation

Training increases the probability of creative

solutions emerging. It becomes extremely necessary if some of the parties with no negotiation experience are to participate on equal footing with other more sophisticated parties.

(8) Generating initial statements of concern and/or alternative design proposals

First, topics to be included in the agenda should be identified. Then statements can be made identifying concerns, but not necessarily interests. Alternative design proposals could be generated at this point to reflect those concerns.

b. Negotiation and Consensus-Building

(1) Preparing a single negotiating text

This can be done by participants or the mediator, and has proved a difficult task in some cases.

(2) Identifying the underlying interests of the negotiating parties

(3) Inventing and presenting potential packages of commitments and concessions

(4) Preparing and signing of final agreement

Representatives of interests may have to check back with their groups to commit them to the final agreement. Many times the signing commits the parties to implementation.

c. Post-Negotiation

(1) Inventing ways to bind parties to the

agreement

An example would be the posting of bonds. After the formal agreement is signed, it is timely to make sure any informal agreements are linked with formal actions.

(2) Monitoring implementation of agreements

This step may be as simple as giving an individual power to periodically check on the progress of implementation.

(3) Remediating or renegotiating elements of the agreement, if necessary, especially when conditions or participants change

(4) Evaluation

This last step can be done formally or informally, internally or externally, and is vital if the process is to improve.

Several steps were noted as posing particular challenges in actual usage. Susskind and and Madigan developed some innovative techniques which they applied in one very complex case. (1984,p. 194) They first formed negotiating teams consisting of citizen, business and City Government representative members. From them, committees were created with representatives from each team to discuss one major interest each, -for instance, public education, crime and safety, etc. This forced the groups to understand and

consider interests other than their own. It also made the participants more accountable. The committees defined the agenda items, then prepared draft problem statements and recommendations. These served as "single-negotiating texts" for the full negotiating session. (p. 195) In smaller scale cases, the participants represented only themselves and were individual negotiators.

Another technique used was to hold public hearings at the draft agreement stage. The hearings serve to double-check the representativeness of the teams. If anyone surfaced at the end of the process to suddenly denounce the mediation effort, they would have to justify waiting until the last to step forward. Many organizations were asked to sponsor the hearings, but not to necessarily endorse the agreement.

In another method, the mediator and his staff prepared an Implementation Index, not signed by the participants, that outlined steps to be followed for implementation. The document also helped in monitoring the agreement. In complex cases, the team leaders might also extend their services through to implementation and monitoring because of the difficulties sometimes experienced in getting groups and individuals to take responsibility for these two steps.

In some instances, the mediator may have to play a very

active role, more than a mere facilitator, to ensure the process moves along. This may mean actively helping to create workable options, serving as a spokesperson, taking on press coverage and making sure the community-at-large views the process as fair and efficient. The danger, of course, lies in the actve mediator taking sides or over-controlling the negotiation process. Susskind and Madigan believe, however, that the opportunity for success in using active mediation far exceeds its drawbacks. It ensures all parties a chance to participate and may be the only workable technique when (a) parties are not able to meet face-to-face without assistance, (b) several diverse interests should be represented at the table, and (c) participants lack the skills or knowledge necessary for communication, brainstorming, or joint-problem solving.

Most of the cases used to illustrate environmental dispute resolution are large and complex, yet the same analytic principles can be applied to smaller-scale cases. The distinctive difference is in the number of participating parties, the relationships among them, the complexity of the issues, the role of the experts and mediators, and the availability of precedents. (Bacow and Wheeler, 1984, p. 350) In reality, many controversial cases can and have been resolved using less formal steps, but still including most all the stages. The stages include identification of

incentives bargainers face in desiring a settlement, analysis of the problem, representation of parties, evaluation of the mediation process, solution proposals, compensation, and compliance or implementation. (p. 350)

CHAPTER SIX: FINDINGS

Application of Susskind-Madigan Model for Conflict Resolution to Four Thirty-three Ward Parkway Case Study

Attempts to check if the Harvard Program on Negotiation or the Conservation Foundation in Washington, D.C. describes and uses cases involving design firms have not been fruitful. None of the staff contacted at either location can recollect such an instance, although many cases analyzed in their publications are typical problem projects for landscape architecture/architectural offices. In fact, a landscape architect and assistant design professor at Kansas State University, Laurence Clement, was the only design-oriented participant of a 1987 Harvard seminar on mediated negotiation, offered through the Law School. None of the case studies he and his fellow seminarians(primarily lawyers) analyzed included designers or design firms as participants. Even with the involvement of M.I.T. and Tufts University in the Harvard Program, and the close proximity of landscape architecture and planning in those schools, it appears there has been little or no integration.

Fortunately, mediation efforts in the design fields are not

dependent on inclusion in Eastern university workshops. Even if their examples do not specifically include landscape architects or architects as participants, they still can offer relevant guidelines for a wide variety of negotiation. In this chapter, the Susskind-Madigan model for conflict resolution is applied to the four thirty-three Ward Parkway case study by comparing each of the model's 16 steps with the process followed in the actual project.

Phase One: Pre-Negotiation

(1) Identifying Major Interests and Appropriate Spokespersons

The first step in Phase One of the Susskind-Madigan model is identifying major interests and appropriate spokespersons. On the developer's side, they were easily identifiable:

(a) Saul Ellis, the developer

(b) Sherwin Epstein, his lawyer

(c) Ralph Ochsner, his expert witness and negotiator

(d) Glen LeRoy, his consultant and expert witness

These four people consistently represented the pro-development side of the conflict to the press, the public, and in City Government hearings and meetings. In addition, a few neighbors, whose property

immediately adjoined Ellis's land, also favored the development, but could not be considered spokespersons. Miller Nichols testified in favor of the project at the public hearing, but did not represent anyone other than his business, the J.C. Nichols Company, that might be interested in building a similar development south of the Alameda Plaza.

For some inexplicable reason, the Sunset Hill residents, opposed to the development, never organized soon enough to effectively block the rezoning request. Several of the residents were prominent businessmen and could easily have exerted more leadership. Perhaps out of respect and deferrence to their powerful compatriots, each was hesitant to try and organize the dispirited group. The two existing neighborhood home associations did not provide leadership, either. The third home association was organized too late to be effective.

Those opposing the development were divided, into five factions:

(a) Those against any multi-family development

(b) Those for a use change for the area, but at a lower density then proposed, i.e., four and one-

half stories or less

(c) Those against the proposed development, but desiring no conflict

(d) Those who might agree to a use change if the opposition could have some control over the design

(e) Those who favored the proposed development if it were built in a more appropriate location

William Shapiro, a lawyer whose home would no longer have a view of the Plaza with the proposed development in place, was against the development position "(a)". However, no evidence exists that he represented residents other than himself during any of the formal meetings and hearings. During the June 13th Plans and Zoning Committee Meeting, he did speak on behalf of four attorneys who worked to develop their side of the issue, in agreeing to meet privately with Chairman Cleaver. At that point, Epstein said he was only interested if the four attorneys represented all the residents in the area.[1] There is no evidence they did.

Residents Davis and Rowland also testified against the project during the June 13th meeting, but they did not

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[1]Summary of the Plans and Zoning Committee Meeting, June 13, 1984, p. 15.

represent anyone other than themselves. Davis, Rowland, and Drummond, the expert witness brought in by the opposition, supported the "(e)" position. Craig Sutherland, and his attorney, Steve Taylor, most nearly represented the "(b)" and "(d)" positions.

In this case, identifying the major interests and concerns of each group was easy. Discerning the representation of the participants was impossible. This is often the case in many environmental conflict situations. Individual participants sometimes are known to each other for the first time at crucial public hearings, when joint representative testimony would carry more weight for their case. The model was applicable for this first step. It became possible, at an early stage, to discover one of the key factors for the opposition's ineffectiveness. They had no single spokesperson.

(2) Selecting A Mediator or Other Type of Non-partisan Facilitator

The second step in the pre-negotiation phase is the selection of a mediator or other type of non-partisan facilitator. Certainly, some of the six pre-conditions, suggested by Susskind and Madigan before bringing in a third party, existed in this case. (See

Chapter Four, p. 85) The opposing parties were numerous and fragmented, and the participants would be likely to deal with each other in the future. They could even be future tenants of four thirty-three Ward Parkway. Whether the community-at-large cared about the outcome is completely speculative. The second Protest Petition would have put the re-zoning request on the November ballot for the City electorate to vote upon. The voters might have perceived the conflict as only affecting a small exclusive segment of the population. Or, they might have seen the development as damaging to one of the City's major attractions, Country Club Plaza, and actively campaigned to sway the vote against a zoning change. Certainly, this land use conflict was appropriate for use of a neutral facilitator or mediator. The model was only partially applied in this step. Had it been fully applied, the compromise might have come to a quite different conclusion. Ochsner would have been supported by both groups and charged with a fair solution which could have achieved the optimum consensus among all parties.

(3) Defining the Ground Rules and Protocols for Negotiation

Ground rules and protocols for negotiation are normally layed out in the third step, in mediated

conflicts. This case was never formally negotiated, hence, neither side consciously mapped out procedures, ways of dealing with the press, or documentation procedures. Ochsner, however, because of his professional training and experience, was able to select certain strategies for dealing with conflict situations. In this case he was very conscious of the disorganized and very disenchanted opposition. Unfortunately for the opposition, they had no one who could organize them into a single negotiating body with a planned strategy. The Kansas City Times, in reporting the case proceedings, simply quoted those who testified, not knowing their representation. Therefore, the step was only partially used.

(4) Setting the Agenda for Negotiations

The fourth step was not formally carried out in this case. The arguments, pro and con, were set forth by the staff planner, the developer, the residents and expert witnesses. Ochsner, more than anyone, was consciously aware of drawing up a list of possible trades before the private meeting with Cleaver and the lawyers. Consequently, this step only partially applied.

(5) Identifying and Allocating Resources to Support Negotiating Efforts

The fifth step was not a problem in this instance. The step fully applied. Early on, Ellis agreed to pay for Ochsner's efforts to meet with the neighbors, regardless of the outcome. Their goodwill was obviously important to him. Of course, neutrality was never pretended. Ochsner was intent on obtaining the best design possible, agreeable to first the developer, his client, and secondly, the neighbors. Each side paid for their own expert witnesses. Ellis funded the traffic and appraisal studies, and paid for Glen LeRoy. Craig Sutherland funded Malcolm Drummond and the cost of preparing the Memorandum in Opposition To Proposed Rezoning, put together by his lawyers.

(6) Engaging in Joint Fact-finding and Agreement on All Facts of the Case

The sixth step did not occur, hence did not apply. Each side did their own homework and initiated their own research. One wonders if traffic studies could have been found to support either side of the dispute. Judgement is partially subjective when an appropriate location for high-density housing is chosen. No single consistent factor determines the effect of the proposed development on the adjacent neighborhood. Several

conditions may contribute, such as: (a) building height, (b) building design, (c) degree of buffering, (d) type of development, (e) resultant traffic, (g) the attitude of the developer, and (h) support of the City Planning Staff and City Council.

Agreement on all facts of the case, the second part of this step, was never achieved, either. The opposition never agreed with Ochsner's traffic study which asserted that vehicular traffic in the neighborhood would not be adversely affected by the proposed high-density development. Their "expert witness" believed the Brush Creek and Country Club area plans were sufficiently specific in recommending only medium density housing. The problem always surfaces of how to provide a purely neutral, expert opinion on controversial issues needing additional research.

(7) Training Parties or Teams in Techniques of Negotiation

The seventh step of teaching parties or teams the techniques of negotiation probably is not applicable in this particular rezoning case. Because Ochsner formally represented the developer's interests, he did not believe it was his responsibility to hold sessions with the opposition to teach them the techniques of

negotiation. However, had the opposition gotten together before the private meeting with Cleaver and agreed to even discuss certain elements of the proposal open for debate, the Plans and Zoning Committee might have viewed them as more reasonable and receptive to compromise. Attempts at negotiation were carried out at that meeting by Ochsner, a professional planner who had settled other land use conflicts with a variety of techniques. Opposition lawyers may have felt more comfortable settling disputes in court rooms rather than in church basements.

(8) Generating Initial Statements of Concern, and/or Alternative Design Proposals

The last step of Phase One occurred throughout the process, but in a fragmented and informal way. The opposition never developed nor advanced complete alternative designs for development. The Memorandum, prepared by Sutherland, highlighted objections, but did not offer a alternative plan. The step could have applied, but only partially occurred.

Phase Two: Negotiation and Consensus-Building

(1) Preparing a Single Negotiating Text

The first Step of Phase Two in this case, was the

application for rezoning and the height variance presented to the Kansas City Zoning Board, January 2, 1984, by Saul Ellis. The original request could be considered the point of departure from which discussion could begin. By January 24th, Ochsner made sure that Ellis had drawings to show the residents at the public meeting in the Alameda Plaza. Drawings and diagrams are appropriate as negotiating texts where design is involved, either of structures or the land itself. Many opposing objections could best be evaluated and discussed by having a clear picture of the intended building and its placement on the irregular parcel of land. The City Planning Commission obviously saw this as a necessity when it attached the seven conditions to approval of the rezoning request. (See Chapter Four, p. 66) This step fully applied.

(2) Identifying the Underlying Interests of the Negotiating Parties

The second step is of prime importance to a succussful mediator. Ochsner never revealed that he consciously went through this step, but it would not be difficult to conclude what the underlying agendas were for the major players:

(a) Saul Ellis

interested in profit

desired to build more high-priced, executive housing to enhance image and profit

(b) Sherwin Epstein

interested in establishing reputation for successful land use settlements

desired to build strong case precedent so other big dollar projects might follow that he could mitigate

(c) Ralph Ochsner

wanted to insure development would have high quality and blend with other Plaza structures

wanted to avoid lengthy and costly litigation for his client

interested in expanding opportunities for his landscape architecture/planning firm

desired to build his reputation as fair-minded, reasonable, professional, and ready to negotiate, in dealing with confict situations

(d) City Council

needed to review the project and give

final approval

desired to maintain their political position

wanted to spur economic growth, attracting new businesses into the area with more high income, residential housing

(e) M.S. Malik

tried to be consistent with past City actions in or near the Plaza

may have felt intimidated from dealing with such powerful and influential people, so did not want to cause additional conflict

wanted to retain his job

(f) William Shapiro

wanted to block project to retain view of Plaza from his house

believed intrusion of high-rises into Sunset Hills would lessen attraction of neighborhood

felt developers should consider the effect of their proposed development on neighborhood, besides increasing their profit

(g) Craig Sutherland

wanted a quality project that would fit, contexturally, with Plaza and surrounding buildings

desired to maintain the property value of his home

did not want high-rises intruding into a high-quality neighborhood

(h) Emmanuel Cleaver

wanted to establish himself as a compromiser, crucial to efficient running of the City Council

desired to encourage City development, but not at the price of greed with no consideration for surrounding residents

This second step could fully apply.

(3) Inventing and Presenting Potential Packages of Commitments and Concessions

One instance exists as evidence for occurrence of the third step. Ochsner presented his list of potential trades at the private meeting held by Cleaver in his church. Informal discussions of possible trades must have taken place both before and after the private meeting with Cleaver and the lawyers. Because, by July

5th, Ellis and Ochsner had decided to go with the compromise plan of six and one-half stories. The neighbors fought on, however, still hopeful they could delay the approval and eventually garner enough support to either totally block the project, or force the developer back to four and one-half stories. The step was applicable, and probably took place on more than one occasion.

(4) Preparing and Signing of Final Agreement

There was never a joint signing of a final agreement, the last step in Phase Two. Although the City Council unaminously passed the amended version of the request, total consensus among all participants was not reached. There were several unsuccessful attempts after the vote to delay implementation. Ellis obviously won, but at the price of a few bitter, and a few more, unhappy, neighbors. Another home association was organized to help stave off additional development to the west and southwest of the Ellis property. Once development can legally proceed, the City Codes Administrator is responsible for seeing that what is built is what was legally approved. (Duncan, April 24, 1987) Altman and Shapiro attempted to prove this was not the case, but the Board of Zoning Adjustment upheld the compromise plan.

Phase Three: Post Negotiation

(1) Inventing Ways to Bind Parties to the Agreement

Making sure the parties are bound to the agreement, in this case, was carried out by a City government agency, the City Codes Administrator. If citizens believe codes are being violated, they can petition the Board of Zoning Adjustment, as described above.

(2) Monitoring Implementation of Agreements

No formal periodic monitoring is done by City Codes unless there is a request. The neighbors living in Sunset Hills could readily check building progress on a daily basis.

(3) Renegotiating Elements of the Agreement

There was never any negotiating after the City Council passed the amended ordinance. This step and the final evaluation step did not apply.

(4) Evaluation

There was never any formal evaluation, the last step in the Post-Negotiation Phase.

Use of the Matrix

The above information was transfered to the matrix, described in Chapter Three. Each step was examined

according to the way it applied to the case study. The possibilities were sorted into five categories:

(a) The step fully applied to the subject study and was used.

(b) The step applied, but was only partially used.

(c) The step applied to the case study, but was not used.

(d) The step only partially applied, and was partially used.

(e) The step did not apply and was not used.

Figure 5.1 THE MATRIX

PROCESS	433 WD.PKY. CASE STUDY
Pre-Negotiation Phase	
Identification of major interests and appropriate spokespersons	b
Selection of mediator or other type of neutral facilitator	b
Defining ground rules	d
Setting the agenda for negotiations	c
Identification of support resources	a
Engaging in joint fact-finding, including agreement on all facts of the case	c
Teaching parties techniques of negotiation	e
Generation of initial statements of concern or alternative design proposals	b
Negotiation and Consensus-Building Phase	
Preparation of single negotiation text or master plan	a
Identification of underlying interests of negotiating parties (as distinct from their "position"), including incentives for settlement	a
Invention and presentation of potential trades	b
Final agreement signed by all parties	
Post-Negotiation Phase	
Methods invented to bind parties to agreement	d
Monitoring implementation of agreement	d
Renegotiation of any elements of the agreement	e
Evaluation of the negotiating process and the final agreement	e

Evaluation of Model

How applicable was the Susskind-Madigan model to a conflict situation typical for design offices? The model lists 16 steps, only four of which did not apply in the subject study. Nearly all of the steps could have applied if a neutral mediator had been used in a more formal situation.

The fact that several steps were not applied, affected the outcome by lessening the total satisfaction of all parties. The opposition would have been more effective if they had united and formally layed out a negotiation process. The sixth and seventh steps, in Phase One, did not apply because the mediator was not totally neutral. There was no agreement on all facts of the case, when each side produced their own background studies to prove their theories. This was never resolved to the opposition's satisfaction. The opposition could have benefited from instruction in the techniques of negotiation, however Ochsner was hardly in the position to do so, as representative of the developer. Under pressure from the neighbors, the developer finally offered an alternative plan. The opposition, while generating a formal statement of concern, the Memorandum, never produced a positive alternative plan. Sutherland, at least, believed strongly that they were under no obligation to do so. This may have weakened their bargaining position.

The Post-Negotiation Phase was barely applied. There was no renegotiation of any elements of the agreement, and no evaluation of the negotiating process and final agreement. The citizen's request, Altmann and Shapiro's effort, was denied by City Government. (Altmann, 1986)

From the data examined, the amount of unresolved conflict is small, perhaps only the two neighbors mentioned above are still bitter. Dissatisfaction may be more widespread. And still more prevalent among the affected neighbors, is a feeling that they finally learned how to fight a proposed development about the time the structure broke ground. The model does offer a logical method for analyzing the four thirty-three Ward Parkway case study. The model process more than covered the steps actually completed in the subject study. There were no steps which took place and were not outlined in the Susskind-Madigan model.

How applicable is this model process for other conflict situations typical for design offices? Could a design firm effectively use the model for obtaining consensus on projects containing complex controversy, one they might have turned down in the face of long, difficult negotiations ahead? The model can offer firms a usable outline process, regardless of project scale or type. Without such a form,

it becomes easy to overlook steps important to a satisfactory outcome for all parties. Knowing and understanding the process before progressing towards resolution of the conflict gives a mediator confidence and enhances their effectiveness. It is a process many design offices could feel comfortable using. The model is far from complete, however. To be generic and apply to the maximum number of situations, details must be sparse. The actual strategy for moving through the process is left to the facilitator, whether they are the design principal in a firm, or an outside neutral.

Beyond the process, effectiveness of any mediation effort depends on the trust held by the participants for the negotiator. Participants must also believe in the process used. Without these pre-conditions, participation is apt to be limited, and the final agreement unsatisfactory. Everyone has to think that they will all be winners in some respect. The motivation for using such a process is to avoid the typical legal win-lose profile. In the case examined in this study, the acting negotiator, because he was hired by the developer, did not attempt to retain a neutral stance. He did, to a degree, manipulate the opposition to lessen their effectiveness. It is no wonder the neighbors balked at negotiating and generating potential trades. Cleaver came into the situation too late to build

up the trust necessary with the opposition. The opposition viewed him, and City Hall, as part of the pro-development-at -all costs problem.

During the actual negotiation, what strategy can be used to come up with creative solutions? Should the mediator meet separately with participants, or insist on joint meetings? What are some tools or strategies for working with groups? The model does not address these problems. Nea Carroll, an experienced environmental mediator, always operates within a time-frame for the most effective participation.[2] A sense of urgency, she says, is needed to get people talking. (Carroll, November 4, 1986) She views the job of facilitator as one of protecting interests. No one party should dominate, everyone must agree to contribute, with no sensoring nor judging. Her step of defining ground rules is more elaborate than the Harvard model by including the development of a strategy agreeable to all parties. Her negotiation phase contains discussion, caucuses and information-gathering, with check points throughout the process to monitor progress. However, her total process is not as detailed and complete as the Susskind-Madigan model. She is aware of both the Harvard Program for Negotiation and

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[2]Carroll founded Touchstone, a Seattle business directed towards assistance and training in communications, conflict resolution, public participation and organizational development. She is used here to aid evaluation of the Susskind-Madigan model.

Conservation Foundation efforts.

The Susskind-Madigan model is incomplete in other ways. The authors list "Identification of Support Resources" as important for a successful outcome. In reality, who pays for a third party mediator? Carroll is typically brought in by federal agencies who mostly pay for her services. The cost is not split between interest groups and the public agency. The latter see their role more as consensus-builder instead of advocate for one position. But to be effective she must be perceived by all parties as caring, interested, professional and open for creative solutions, not pre-determined. Both the Conservation Foundation and the Harvard Program for Negotiation view financial support as a potential problem affecting resolution. In the case examined here, financial support, provided for the mediator by the developer, affected the degree of conflict resolution. The opposition felt Ochsner's caring only went as far as obtaining their approval for the entire project.

Roger Fisher, Professor of Law at Harvard Law School, has come up with one possible solution, including that of contingent fee mediation. Work could begin with an agreement between mediator and one party. Payment of the fee would be based on successful settlement by the mediator. Structure of the fee could be accomplished in a variety of

ways, with the mediator playing an active role in settlement of the dispute and his or her fee. (Fisher, 1986, p. 12)

Meanwhile, the list of firms specializing in conflict resolution continuously grows. (See Appendix B) Their expanding number must reflect that at least some disputing parties have agreed on how to pay for a third party.

Future for Conflict Resolution

The future for conflict resolution is indeed bright for solutions by non-litigated means. Robert Coulson, President of the American Arbitration Association, believes that by the year 2000 much of the responsibility for resolving disputes, both in this country and around the world, will be assumed by the people who are actually coping with the dispute. (Dispute Resolution Forum, p. 2) The shift from formal court litigation processes towards informal mediation, much done by dispute resolution agencies, will be readily apparent. The excessive cost of litigation is one of the prime motivations for the change. Also, involved parties can have more control over the process when settlement is out of court.

Hopefully, states Paul Wahrhaftig, who runs a resource center for mediation and conflict resolution,

> the skills of conflict resolution will become built into other professions and communities. City planners, lawyers...and a lot of government agency personnel will have conflict resolution skills. Neighborhood organizations will have dispute settlement skills built into them, both to handle problems in the community and to deal with outside groups. (p. 7)

All of the literature points to increasing attempts to handle conflict and build consensus within the firms and agencies who face the problems. That means design firms either must be prepared to hire third party mediation experts, or acquire the techniques themselves if they are to remain on the cutting edge. Analyzing applications of workable models to actual dispute situations, as in this thesis, may help design professionals see how effective they might be in aiding conflict resolution.

Future Study Needs

Every design firm makes decisions on what projects to handle. Many potential projects are lost because firms anticipate lengthy controversy and/or litigation before completion. However, there are some landscape architectural and design firms currently engaged, in varying degrees, in conflict resolution across the country. Their efforts are virtually unknown to each other. Design firms could

increase their effectiveness in this area by first sharing the methods they have evolved for solving conflict. A definitive study is greatly needed on how design offices currently handle these situations. Secondly, a forum for sharing what information there is available, applicable to environmental dispute resolution in these offices, is also badly needed. And third, design professionals need to feel confident that they can acquire and successfully utilize techniques for settling problems, paving the way for more design opportunities.

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Jones, Grant, Principle, Jones and Jones, Seattle, Washington, November 17, 1986.

Karner, Gary, Managing Principle, SWA Group, Sausalito, California, November 11, 1986.

Kremer, Eugene, Professor, Department of Architecture, College of Architecture and Design, Kansas State University, Manhattan, Kansas, November 7, 1986.

Kubota, Brian, Principle, Landplan Engineering, Lawrence, Kansas, November 3, 1986.

Lancaster, Charles, Research Associate, Institute for Environmental Negotiation, University of Virginia, Charlottesville, Virginia, November 11, 1986.

Lee, Jean, Realtor, Eugene D. Brown Realtors, Overland Park, Kansas, July 3, 1988.

LeRoy, Glen S., AIA, AICP, Urban Design Consultant, Kansas City, Missouri, April 24, 1987.

Malik, Madan, Planner III, Kansas City Planning Office, Kansas City, Missouri, April 16, 1987.

Marshall, Lane, Professor, Texas A and M University, College Station, Texas, November 17, 1986.

Mealey, Timothy, Associate, Environmental Dispute Resolution, Conservation Foundation, Washington, D.C.

Mercer, Rod, Technical Activities Coordinator, ASLA, Washington, D.C., November 11, 198686.

Montgomery, Tom, Development, Planning Development Services, Inc., Wichita, Kansas, November 14, 1986.

Ochsner, Ralph, President, Ochsner, Hare and Hare, Planning Consultants/Landscape Architects, Kansas City, Missouri, October 31, 1986, April 11 and 28, 1987.

Palermo, Gregory, Architect, HOK, St. Louis, Missouri, October 31, 1986.

Richards, Cheryl, Administrative Assistant for Councilman Cleaver, City Council, Kansas City, Missouri, April 23, 1987.

Shapiro, William, Attorney and Sunset Hills Resident, Kansas City, Missouri, April 16, 1987.

Shortlidge, Neal, Attorney, Kansas City, Missouri, October 31, 1986.

Starr, Mrs. Lawrence, Sunset Hills Resident, Kansas City, Missouri, April 16, 1987.

Sutherland, Craig, President, Sutherland Lumber Company, Kansas City, Missouri, April 30, 1987.

Thompson, George, Director, Kansas City Programs, College of Architecture and Design, Kansas State University, Kansas City, Missouri, October 31, 1986.

White, Michael, Attorney, Kansas City, Missouri, April 24, 1987.

Wilson, Patricia, Attorney, Watson, Ess, Marshall and Enggas, Kansas City, Missouri, April 17, 1987.

APPENDIX

A. "Primary" Dispute Resolution Processes

ADJUDICATION	ARBITRATION	MEDIATION CONCILIATION	TRADITIONAL NEGOTIATION
Nonvoluntary	Voluntary unless contractual or court centered	Voluntary	Voluntary
Binding, subject to appeal	Binding, usually no appeal	Nonbinding	Nonbinding(except through use of adjudication to enforce agreement)
Imposed, third-party neutral decision-maker, with no specialized expertise in dispute subject	Party-selected third-party decision-maker, usually with specialized subject expertise	Party-selected outside facilitator, often with specialized subject expertise	No third-party facilitator
Highly procedural: formalized and highly structureed by predetermined rigid rules	Procedurally less formal: procedural rules and substantive law may be set by parties	Usually informal, unstructured	Usually informal, unstructured
Opportunity for each party to present proofs supporting decision in its favor	Opportunity for each party to present proofs supporting decision in its favor	Presentation of proofs less important than attitudes of each party may include principled argu-	Presentation of proofs usually indirect or nonexistant: may include principled argument
Win Lose result	Compromise result possible (probable)	Mutually acceptable agreement sought	Mutually acceptable agreement sought
Expectation of reasoned statement	Reason for result not usually required	Agreement usually embodied in contract or release	Agreement usually embodied in contract or release

A. "Primary" Dispute Resolution Processes (cont.)

ADJUDICATION	ARBITRATION	MEDIATION CONCILIATION	TRADITIONAL NEGOTIATION
Process emphasizes attaining substantive consistency and predictability of results	Consistency and predictability balanced against concern for disputants relationship	Emphasis on disputants' relationship, not on adherance to or development of consistent rules	Emphasis on disputants' relationship, not on adherance to or development of consistent rules
Public process: lack of privacy ofs submissions	Private process unless judicial enforcement sought (Green, 1984, p. 257)	Private process	Highly private process

B. Growth of Environmental Dispute Resolution Organizations

Mid-Seventies

ACCORD Associates
1898 S. Flatiron Ct.
Boulder, CO

Center for Negotiation and
Public Policy

Conservation Foundation
1255 Twenty-third St., NW
Washington, D.C. 20037
202-293-4800

Keystone Center
Box 38
Keystone, CO 80435
303-468-5822

Mediation Institute
605 First St.
Seattle, WA
206-624-0805

1978-1979

Center for Collaborative
Problem Solving

Environmental Mediation
International
Washington, D.C.
Ottawa, Ontario

ERM-McGlennon Associates
283 Franklin
Boston, MA

FORUM, On Community and
Environment
540 University Ave.
Palo Alto, CA 94301

Environmental Mediation Project
Old Dominion University
Virginia

a. Institute for Environmental Negotiation
   University of Virginia
b. Public Mediation Services
   Falls Church, Virginia

Environmental Mediation Project at the
Wisconsin Center for Public Policy
1605 Monroe St.
Madison, WI 53711
608-257-4414

New England Environmental Mediation Center
108 Lincoln
Boston. MA

Negotiated Investment Strategy

1980-1984

Western Network
Forum
New Mexico

Illinois Environmental
Consensus

Neighborhood Justice Center
Honolulu, Hawaii

National Institute for Dispute Resolution (provided funds to establish state-wide offices in Hawaii, MA, MIN, NJ and WI)

Others:

Touchstone (Nea Carroll)
5425 Lake Washington Blvd.
Seattle, WA 98118
206-622-4882

Center for Dispute Resolution
1405 Arapahoe
Boulder, CO

Mediation Associates
1919 Boulder
Boulder, CO

C. Common Question List

This checklist was used during telephone and personal interviews to ensure sufficient and common information was collected from sources. It was utilized at the beginning of the thesis to collect data on conflict resolution methods currently in use by landscape architectural offices, and as an initial guideline for the Four Thirty-three Ward Parkway data collection.

Name of Case

- Location:
  - Size of Community
  - State
- Type of Firm:
  - Landscape Architectural
  - Planning
  - Engineering
  - Architecture
- Services Offered:
- Project Management:
  - Who deals with client?
  - Who deals with public?
- Description of Project
- Conflict Description:
  - Description of Dispute
  - Agreement on all facts of case

Participants

Identification of underlying interests of negotiating parties

Cause

Object of Resolution

Generation of initial statements of concern or alternative design proposals

Duration

Year Concluded

Resolution Process:

Method used:

Without Third Party

Was a third party considered? Why not?

With Third Party:

Name and position

Cost

Method of payment

Stage in design process method used

Invention and presentation of potential trades

Result:

Was agreement reached? When?

Preparation of single negotiation text or master plan

Will they remain over the long term?

What binds parties to the agreement?

Were all parties able to participate equally?

Were parties able to work together throughout process?

Was implementation reached? Why or why not?

How will it be monitored?

Did all participants believe their goals had been advanced?

Was any agreement re-negotiated later?

Was the public interest served?

Evaluation:

In retrospect, how would conflict have been ideally handled?

Could a third party have helped?

THE POLITICS OF DESIGN CHANGE: FACILITATING THE PRACTICE OF LANDSCAPE ARCHITECTURE THROUGH CONFLICT RESOLUTION STRATEGIES

by

ANN STEWART FEYERHARM

B.S., Michigan State University

M.S., University of Wisconsin

AN ABSTRACT OF A MASTER'S THESIS

submitted in partial fulfillment of the

requirements for the degree

MASTER OF LANDSCAPE ARCHITECTURE

College of Architecture and Design

KANSAS STATE UNIVERSITY
Manhattan, Kansas

1988

ABSTRACT

Landscape architects frequently deal with conflicting interests caused by a dramatic rise in diverse, special interest groups seeking an active voice in design decision-making. Projects may take years to complete as contending parties delay construction. Such projects are costly to firms, sometimes causing expensive litigation which may not resolve differences. Landscape architects are reticent to take on more agressive roles in directing resolution.

Both the community planning and landscape architecture professions are moving towards greater participation by affected parties with a real effort towards consensus-building. Groups now view implementation as a necessary part of decision-making. In this thesis, a negotiating strategy was examined to determine whether a more efficent process exists for resolving conflict in design projects.

A generic model for dispute resolution, developed at Harvard University Law School, was applied to a typical design project by use of a matrix. The Susskind-Madigan model includes more defined negotiating stages than other available resolution techniques. A proposed development for executive-type condominiums in Kansas City was selected for analysis. Efforts by the developer to alter area zoning regulations created a strong protest from the surrounding

neighborhood. The degree of controversy, proximity to the writer, and accessibility to case information all determined the case choice.

A comparison of the case study with the pre-negotiation, negotiation and consensus-building, and post-negotiation phases of the model revealed an incomplete match, due to several factors. A few steps were not applicable. More importantly, the mediator lacked neutrality and the opposition lacked unity and knowledge in negotiating conflict. As a result, dissatisfaction still exists among neighbors of the project.

The results of this study show that analytic principles in the Harvard model can apply to a variety of controversial cases handled by design firms, regardless of size or complexity. Understanding a mediating process provides landscape architects and designers with the confidence to handle conflict situations themselves, or realize when outside mediation is needed.